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TESTIMONY OF GARY K. KAHN
FRIENDS OF THE COLUMBIA GORGE
MAY 7, 2009

My name is Gary Kahn and I am an attorney representing Friends of the Columbia Gorge. Friends is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Friends' membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area. Friends supports renewable energy development, so long as projects are responsibly sited and comply with all applicable laws.

Friends of the Columbia Gorge opposes the Whistling Ridge Energy project as it is currently proposed. S.D.S. Co., LLC must modify its application to better address the applicable review criteria, to remove all portions of the project from the National Scenic Area, and to substantially reduce the impacts of the project on scenic, natural, and recreational resources.

As for consistency with land use laws, the application contains a fatal flaw: part of the project would be located within the National Scenic Area. The entire project is classified as an industrial use under the Scenic Area rules because it would be primarily involved in the production of electric power for commercial purposes.¹ Industrial uses are prohibited within the General Management Area of the Scenic Area.² Despite this prohibition, SDS proposes to construct and use more than two miles of roads within the General Management Area for industrial purposes.³

¹ SCC § 22.04.010(88)(d) (definition of "industrial use.")

² SCC § 22.10.020(A); 16 U.S.C. § 544d(d)(6).

³ Application at Fig. 2.3-1.

In both the National Scenic Area and in Skamania County generally, both the construction and uses of roads must be reviewed. Attached as Exhibit A is a 2002 letter from the Columbia River Gorge Commission discussing the requirement to review roads in the National Scenic Area for their intended uses. A recent federal court decision, *Friends of the Columbia Gorge v. United States Forest Service*,⁴ discusses the same requirement.⁵ A copy of that decision is attached as Exhibit B.

Similar to the Scenic Area requirement, Skamania County requires its private roads to be classified “based on their primary functions.”⁶ The County road system has several different classification categories, ranging from private driveways to commercial development to recreational use.⁷ Proposals to change roads from one category to another, such as residential to commercial use, trigger review.⁸

In the instant matter, the roads proposed within the Scenic Area are proposed specifically for industrial purposes. The applicant proposes to construct new roads and to widen and improve existing public and private roads, converting them to new uses.⁹ These roads would be used to haul wind energy turbine components and construction materials—industrial loads that would exceed the WSDOT legal load limit of 52.75 tons.¹⁰ This is an industrial activity.

In summary, the proposed road construction and use within the General Management Area are part of the proposed industrial project and are prohibited. SDS must modify the proposal to remove all project components from the GMA.

⁴ 546 F. Supp. 2d 1088 (2008).

⁵ *Id.* at 1113 (“Because the road had not been used in at least one year *for log hauling*, the use of the road *for logging purposes* is a ‘discontinued use.’”) (emphasis added).

⁶ SCC § 12.03.030

⁷ *Id.*

⁸ SCC § 12.03.070.

⁹ Application at §§ 2.20.4.8, 2.20.4.9.

¹⁰ Application at 4.3-37.