

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2009-01

of

WHISTLING RIDGE ENERGY, L.L.C.

for

WHISTLING RIDGE ENERGY
PROJECT

MOTION OF INTERVENORS FRIENDS OF
THE COLUMBIA GORGE AND SAVE OUR
SCENIC AREA TO TAKE OFFICIAL
NOTICE OF SKAMANIA COUNTY
ORDINANCE NO. 2011-08

Pursuant to WAC 463-30-230, Intervenors Friends of the Columbia Gorge, Inc. (“Friends”) and Save Our Scenic Area (“SOSA”) request that the Council take official notice of the attached document (Exhibit A), which is a signed copy of Skamania County Ordinance No. 2011-08 and the Board of County Commissioners’ agenda item commentary for the ordinance. Exhibit A contains judicially cognizable facts that are within the Council’s specialized knowledge, and it should be admitted into the record prior to action by the Governor on the Council’s recommendations.

The Skamania County Board of County Commissioners adopted Ordinance 2011-08 on December 13, 2011. Intervenors first became aware of the adoption of the ordinance on December 28, 2011. The Ordinance involves the County-wide moratorium prohibiting new conversions of unzoned forestland from forest use to non-forest use. The moratorium was first

adopted on July 10, 2007 and has been readopted and extended on several occasions thereafter.¹ Ordinance 2011-08 extends the moratorium for another six months.

Skamania County's ongoing moratorium has been the subject of extensive argument and testimony in these proceedings, and the Council has previously taken official notice of prior iterations of the moratorium.² Friends and SOSA request that the Council also take official notice of the December 2011 extension of the moratorium, to help ensure that the record will be complete with the most up-to-date information for a decision by the Governor on the application for site certification. In making her decision, the Governor should review the current status of land use planning and zoning in Skamania County as they relate to the proposed Whistling Ridge Energy Project. The December 2011 moratorium extension will be in effect during the time period when the Governor is to take action on the Council's recommendation pursuant to RCW 80.50.100(3), and thus should be part of the record.

Official notice of Ordinance 2011-08 should include pages 5 and 6 of Exhibit A, which are the County's official summary of the Ordinance. The County's summary provide a helpful list of the prior moratorium ordinance numbers and dates, an explanation and summary of the ongoing moratorium, and a status update on the County's efforts to amend its zoning authorities. The County regularly includes agenda item commentaries like this with copies of county

¹ The relevant ordinances and dates of their adoption are listed on Exhibit A at page 5.

² See, e.g., May 7, 2009 Tr. at 30–31; Jan. 3, 2011 Tr. at 20, 30–31, 141–45; Amended Application at 4.2-14; Ex. 1.15C; Ex. 1.17C at 4; Friends' Land Use Op Br. at 9–12; County Land Use Op. Br. at 5; SOSA Land Use Resp. Br. at 1–2; Seattle Audubon Society Land Use Resp. Br. at 1; Applicant Land Use Resp. Br. at 9–10; County Land Use Resp. Br. at 5–6; Friends Pet. for Recons. at 9–12 & Ex. B; SOSA Pet. for Recons. at 27–32; County Resp. to Pets. for Recons. at 11; Applicant Resp. to Pets. for Recons. at 4, 16.

ordinances posted on the county's web site, as it did with the County's prior moratorium extension (Skamania County Ordinance No. 2011-03).³

In conclusion, the Council should take official notice of the December 2011 extension of the County-wide moratorium and ensure that Exhibit A is included in the administrative record transmitted to the Governor.

Dated this 29th day of December, 2011.

REEVES, KAHN, HENNESSY & ELKINS

/s/ Gary K. Kahn

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FRIENDS OF THE COLUMBIA GORGE, INC.

/s/ Nathan J. Baker

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ARAMBURU & EUSTIS, LLP

/s/ J. Richard Aramburu

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³ Ordinance 2011-08 has not yet been posted on the County's web site.

ORDINANCE 2011-08

(AN ORDINANCE TO EXTEND A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF ANY BUILDING, MECHANICAL, AND/OR PLUMBING PERMITS ON ANY PARCEL OF LAND THAT IS 20 ACRES OR LARGER THAT WAS CREATED BY DEED SINCE JANUARY 1, 2006, THE ACCEPTANCE AND PROCESSING OF LAND DIVISIONS (SUBDIVISION AND SHORT SUBDIVISION), AND THE ACCEPTANCE AND PROCESSING OF STATE ENVIRONMENTAL POLICY ACT (SEPA) CHECKLISTS RELATED TO FOREST PRACTICE CONVERSIONS FOR ANY PARCEL LOCATED WITHIN UNINCORPORATED SKAMANIA COUNTY THAT IS NOT CURRENTLY LOCATED WITHIN A ZONING CLASSIFICATION OR THE AREA GENERALLY KNOWN AS THE SWIFT SUBAREA OF SKAMANIA COUNTY.)

WHEREAS, the Board of County Commissioner adopted the 2007 Comprehensive Plan on July 10, 2007; and,

WHEREAS, the Board of County Commissioner, on December 30, 2008, extended for the third time, the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

WHEREAS, on July 28, 2009, the Board of County Commissioners re-established the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

WHEREAS, Skamania County is in the process of updating zoning classification for all land within unincorporated Skamania County to be consistent with the adopted Comprehensive Plan or adopted Subarea Plans; and,

WHEREAS, there are over 15,000 acres of private land within unincorporated Skamania County that do not have zoning classifications; and,

WHEREAS, most of the area within unincorporated Skamania County that is not currently covered by a zoning classification is currently used as commercial forest land or within the Gifford Pinchot National Forest; and,

WHEREAS, the Growth Management Act requires all counties in the State of Washington to provide protections for commercial forest land from the encroachment of residential uses; and,

WHEREAS, since January 1, 2006, over 230 new parcels (20 acres or larger) have been created through the deed process, which is exempt from the subdivision and short subdivision (short plat) regulations and other environmental review processes; and,

WHEREAS, several comments submitted during the public comment periods related to the draft Comprehensive Plan and the draft Swift Subarea Plan expressed concern on the number of exempt parcels that have been created since the planning process began and that the exempt parcels do not have any level of review related to critical resource protection, design standards, road maintenance, stormwater or other checks and balances required for residential lots created through the subdivision or short subdivision (short plat) process; and,

WHEREAS, these new exempt parcels are located in existing forest land areas that during the review process of the Comprehensive Plan and pending zoning classification process, the County Commissioners are determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the Growth Management Act; and,

WHEREAS, allowing new construction on these parcel created through an unregulated exempt process prior to the County Commissioners completing the zoning classification process essentially is circumventing the legislative process and could endanger the public's safety, health and general welfare; and,

WHEREAS, the development within many locations of unincorporated Skamania County, outside of the areas with zoning classifications is located on rugged mountainous terrain, is only accessed through United States Forest Service Roads and private roads, and does not currently have access to electrical power service, land-line telephone service and cellular telephone service; and,

WHEREAS, continued unplanned and uncontrolled residential growth in the areas of commercial forest lands and the Gifford Pinchot National Forest could potentially increase the risk of forest fires and other emergency events; and,

WHEREAS, during the visioning process of the Comprehensive Plan information was gathered to help determine where the best locations are for future residential development, taking into considerations the terrain, access roads, location of critical area resources, location of commercial forest lands, future service needs of residents, and future water usage for residential development; and,

WHEREAS, the Board of County Commissioners having provided proper notice in the official newspaper of general circulation and with a quorum present, conducted a public hearing to consider extending the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County for six months; and,

WHEREAS, after all those attending the hearing were given the opportunity to speak; the public hearing was closed to public testimony; and,

WHEREAS, the Board of County Commissioners has the authority pursuant to RCW 36.70.795 to

adopt a moratorium without holding a public hearing (as long as a public hearing is held on the adopted moratorium within at least 60 days of its adoption) and whether or not there is a recommendation on the matter from the Planning Commission or the Community Development Department, that may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such longer period. A moratorium may be renewed for one or more six-month period(s) if a subsequent public hearing is held and finding of fact are made prior to each renewal; and,

WHEREAS, a work plan for the zoning classification process has been developed; and,

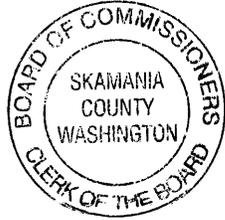
WHEREAS, the Board of County Commissioners finds a sufficient basis to extend the moratorium, believe that the above mentioned circumstances constitute an emergency, and that it is in the public's best interest (to protect the public's safety, health and general welfare) to maintain the status quo of the area pending the County's consideration of developing zoning classifications for the areas covered by the newly adopted 2007 Comprehensive Plan; and,

WHEREAS, the Board of County Commissioners intends for these recitals to constitute its "findings of fact" as required by RCW 36.70.795; and,

NOW, THEREFORE BE IT HEREBY ORDAINED AND ESTABLISHED BY THIS BOARD OF COUNTY COMMISSIONERS AS FOLLOWS: the Board of County Commissioners hereby adopts Ordinance 2011-08 to extend for six months the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

**ORDINANCE NO. 2011-08 IS HEREBY PASSED INTO LAW THIS 13th DAY OF
DECEMBER 2011.**

**BOARD OF COUNTY COMMISSIONERS
SKAMANIA COUNTY, WASHINGTON**



Paul P...
Chairman

Jan D. Richardson
Commissioner

Robert Anderson
Commissioner

ATTEST:

Samela Johnson
Clerk of the Board

APPROVED AS TO FORM ONLY:

[Signature]
Skamania County Prosecuting Attorney

AYE _____ *63*
NAY _____
ABSTAIN _____
ABSENT _____

COMMISSIONER'S AGENDA ITEM COMMENTARY

<u>SUBMITTED BY</u>	Community Development Department	 Signature
<u>AGENDA DATE</u>	December 7, 2011	
<u>SUBJECT</u>	Extend six month moratorium on County wide unzoned land.	
<u>ACTION REQUESTED</u>	Adopt ordinance and set for public hearing on January 18, 2012	

SUMMARY/BACKGROUND

On July 10, 2007, the Board of County Commissioners adopted Ordinance 2007-10 establishing a moratorium for six months on the acceptance and processing of building, mechanical, and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, on the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

The moratorium was extended for six months by the adoption of Ordinance 2008-01 on January 8, 2008, Ordinance 2008-08 on July 3, 2008, Ordinance 2008-13 on December 30, 2008, Ordinance 2010-01 on January 26, 2010, Ordinance 2010-06 on July 7, 2010, Ordinance 2010-10 on December 28, 2010, and Ordinance 2011-03 on June 14, 2011.

The moratorium was re-established on June 14, 2011 by Ordinance 2011-03, and is now proposed to be extended for six months. The County is in the process of updating the zoning classifications to be consistent with the adopted 2007 Comprehensive Plan or the adopted Subarea Plans. There are over 15,000 acres of private land that are located outside of the existing zoning classification areas but are included in the 2007 Comprehensive Plan.

Since the legislative planning process to update the zoning classifications is not yet complete and the legislative process should be protected from circumvention by developers, the Board of County Commissioner should extend for six months the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, on the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

Adopt Ordinance 2011-08, extending the moratorium for a period of six months during regular session, December 13, 2011, and set for public hearing January 18, 2012.

LIST ATTACHMENTS

Ordinance 2011-08

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of
Application No. 2009-01

WHISTLING RIDGE ENERGY LLC

WHISTLING RIDGE ENERGY PROJECT

CERTIFICATE OF SERVICE

I hereby certify that on the date written below, I caused delivery of electronic copies of the following document to EFSEC via electronic mail, and delivery of the original and twelve paper copies of the same document to EFSEC by personal delivery:

MOTION OF INTERVENORS FRIENDS OF THE COLUMBIA GORGE AND
SAVE OUR SCENIC AREA TO TAKE OFFICIAL NOTICE OF SKAMANIA
COUNTY ORDINANCE NO. 2011-08

I further certify that on the same date, I caused delivery of electronic copies of the above-listed document by electronic mail and paper copies of the same document by first-class mail to each of the persons listed on EFSEC's official service list for the proceeding dated December 21, 2011 and posted on EFSEC's web site.

Dated this 29th day of December, 2011.

/s/ Gary K. Kahn

Gary K. Kahn, WSBA No. 17928