

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of )  
Application No. 2009-01 )  
WHISTLING RIDGE ENERGY, LLC. ) Land Use Hearing  
WHISTLING RIDGE ENERGY PROJECT ) Pages 1 - 87  
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A Land Use Hearing in the above matter was held on Thursday, May 7, 2009, at the Underwood Community Center, 951 Schoolhouse Road in Underwood, Washington at 6:30 p.m., before the Energy Facility Site Evaluation Council members.

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JUDGE WALLIS: This is a land use consistency hearing before the Washington Energy Facility Site Evaluation Council regarding Application No. 2009-01, Whistling Ridge Energy, LLC.

My name is Robert Wallis and I'm an Administrative Law Judge. The Council has appointed me to facilitate proceedings in this matter and I will preside over tonight's land use hearing.

This hearing is being held pursuant to the provisions of Section 80.50.090 Revised Code of Washington and Title 463 of the Washington Administrative Code. This public hearing is being held in the Underwood Community Center in Underwood, Skamania County, Washington on

1 Thursday, May 7, 2009. Notice of this hearing was published  
2 in the Vancouver Columbian and the Skamania County Pioneer  
3 and notices were also made to persons on the Council's  
4 interested person list.

5 This land use hearing is being held to receive  
6 public testimony, both oral and written, with regard to  
7 whether at the time of the application Whistling Ridge  
8 Energy Project is consistent with local and regional land  
9 use plans and zoning ordinances.

10 Whistling Ridge Energy, LLC, has submitted an  
11 application to construct and operate a 75-megawatt wind  
12 turbine electrical generation facility in Skamania County,  
13 Washington. EFSEC rules allow the applicant to provide a  
14 certificate from local authorities attesting to the fact  
15 that the proposal is consistent and in compliance with  
16 county or regional land use plans or zoning ordinances such  
17 as the case will be regarded prima facie true of  
18 consistency. If the Applicant does not provide such a  
19 certificate and does not demonstrate compliance with local  
20 land use plans and zone ordinances the Council may request  
21 testimony from the county.

22 Based on the testimony received today and after  
23 consideration of public comments the Council will make a  
24 determination about zoning or land use consistency.

25 The Council has invited Bruce Marvin, Assistant

1 Attorney General and Counsel for the Environment, to be  
2 present tonight.

3 Mr. Marvin, are you in here?

4 MR. MARVIN: Yes.

5 JUDGE WALLIS: Please stand up and identify  
6 yourself. Could you explain your statutory duties under  
7 80.50 RCW for the people who are here this evening. We have  
8 a microphone here.

9 MR. MARVIN: Yes, thank you, Judge Wallis.

10 Again, my name is Bruce Marvin. I'm the Counsel  
11 for the Environment. I know many of you have probably heard  
12 me explain myself in earlier hearings over the last two  
13 days, but once again I'll reiterate for those of you who  
14 haven't been present.

15 Counsel for the Environment is a statutory  
16 position that's created by the legislation that created  
17 EFSEC. I am just that. I am the attorney for the  
18 environment in this proceeding. I do not represent  
19 individuals or groups. I represent the environment. I am  
20 an Assistant Attorney General. My office is in Olympia,  
21 Washington. If you need to contact me or if you'd like to  
22 submit information for me to consider please do so. There's  
23 contact information at the back desk there in terms of  
24 e-mail addresses and telephone numbers.

25 Again, I want to reiterate that I'm here today

1 simply to gather facts, to observe the proceedings, and  
2 develop a position for my client and I look forward to  
3 hearing what you folks have to say today.

4 JUDGE WALLIS: Thank you, Mr. Marvin.

5 Tonight's procedure is going to be a little bit  
6 different from the two hearing sessions that we have held  
7 yesterday and this afternoon because we have a very narrow  
8 point to consider and that is the land use consistency  
9 issue.

10 We are going to begin with presentation on behalf  
11 of the applicant. The applicant has waived its opportunity  
12 to speak first and asks that a representative from Skamania  
13 County be called and testify and present information to the  
14 Council, then the applicant will proceed. Then because we  
15 have indications during the earlier sessions that counsel  
16 are present representing organized groups, we will ask the  
17 counsel to appear and present their information, and then we  
18 will go to our sign-up list and allow any member of the  
19 public to present information to the Council again. I will  
20 remind you that the question tonight is a very narrow  
21 question and that is whether the proposed project is  
22 consistent with local and regional land use requirements.

23 So with that I'm going to ask the Skamania County  
24 representative to step forward to the microphone and tell us  
25 your name and your position and then tell us the information

1 that you have for us.

2 MR. RICHARDSON: Good evening, Chairman Luce,  
3 Commissioners. My name is Jim Richardson, Skamania County  
4 Commissioner for District 2. I'm also current City Chair of  
5 the Board of Skamania County. Thank you very much for the  
6 opportunity to speak tonight on land use consistency. I  
7 present you with --

8 JUDGE WALLIS: Excuse me, Commissioner. We have  
9 an indication that people can't hear what you're saying. If  
10 you could move the microphone closer.

11

12 JIM RICHARDSON,  
13 having been first duly sworn on oath,  
14 testified as follows:

15

16 TESTIMONY OF JIM RICHARDSON

17 Thank you. I am here tonight to present you with  
18 Resolution 2009-22, a certification of land use consistency  
19 review of the Whistling Ridge Energy Project which passed  
20 unanimously by the Board of Commissioners on May 5,  
21 including this letter of consistency from our planning  
22 director and staff report.

23 You will hear a great deal about the appeal of our  
24 proposed zoning ordinance and the ruling of the hearing  
25 officer as it pertains to that ordinance. We want to supply

1 a little history on that process. The county has never been  
2 covered by a complete comprehensive plan or full  
3 comprehensive zoning. This Board of Commissioners initiated  
4 that process three years ago. After the comprehensive plan  
5 was adopted we moved onto zoning. We have attached a  
6 timeline of the zoning process. It began with a series of  
7 day-long Board of Commissioners' workshops in March 8, 2008  
8 and was presented as a draft to our planning commission in  
9 May of 2008.

10 The Board of Commissioners feels strongly about  
11 renewable energy and the current national discussion around  
12 the issue; therefore, in the draft we included language  
13 around small scale and large scale renewable energy  
14 projects. There is language for wind production at the  
15 individual home level. Within the areas we zoned as  
16 commercial resource lands we included large scale wind and  
17 other large scale renewable.

18 The planning commission proceeded to hold four  
19 public hearings throughout the county on the zoning plan.  
20 They took testimony from over 100 people and received  
21 thousands of pages of additional testimony. The planning  
22 commission then held four multi-hour long deliberations  
23 between July and September of 2008. On September 30, the  
24 planning commission presented the Board of Commissioners  
25 with their recommended draft zoning. This included a number

1 of changes including specific recommendations on the large  
2 scale renewable energy pieces.

3 A SEPA was completed and a DNS issued in October.  
4 SOSA and Friends of the Gorge, among others, filed an appeal  
5 of the SEPA. The Board of Commissioners cancelled a public  
6 hearing on the proposed draft awaiting the outcome of the  
7 appeal.

8 The appeal was heard in January and the decision  
9 that overturned the SEPA determination occurred in February.  
10 The decision was that an EIS should have been done on the  
11 zoning, even though there was no actual project application  
12 in place; all of which is based primarily on the King County  
13 v. Boundary Review Board, an annexation case in which an EIS  
14 was not done prior to the action.

15 The examiner also has found a lack of rationale  
16 for some of the large scale wind requirements in the zoning  
17 test which were actually requirements that the county had  
18 adopted based on previous EFSEC decisions.

19 At that point the Board of Commissioners had the  
20 option of appealing, preparing an overwhelming EIS for  
21 starting the process over. The Board of Commissioners has  
22 tabled the zoning process at this time due to a number of  
23 state required planning processes that we must complete  
24 before the end of the year.

25 Interestingly, because of the lack of

1 comprehensive zoning most the of the area involved in the  
2 present application is in fact unzoned.

3 Thank you very much for your time and your  
4 efforts.

5 JUDGE WALLIS: Thank you. Commissioner, I may ask  
6 you to raise your right hand now and swear or affirm that  
7 that you have given and in subsequent testimony you may give  
8 in this proceeding is the whole truth and nothing but the  
9 truth so help you.

10 MR. RICHARDSON: I do.

11 (Jim Richardson sworn on oath.)

12 JUDGE WALLIS: Very well. Are there any questions  
13 from Council members of the commissioner?

14 It appears there are not. Thank you very much.

15 MR. RICHARDSON: Thank you.

16 JUDGE WALLIS: Now is the Applicant's opportunity  
17 to make a presentation.

18 MR. McMAHAN: Tim McMahan, for the record, 825  
19 Broadway, Vancouver, Washington, Suite 725, Stoel Rives Law  
20 Firm, Council, so you're aware of my location. I'm asking  
21 Jason Spadaro to come up. First, I would just ask that the  
22 land use consistency certification be entered as an exhibit  
23 at the hearing.

24 JUDGE WALLIS: That is marked as Land Use  
25 Exhibit 1.

1 (Exhibit No. 1 marked for identification.)

2 MR. SPADARO: Mr. Chairman.

3 JUDGE WALLIS: Could you state your name and your  
4 address and your position for us, please.

5 MR. SPADARO: Jason Spadaro, spelled  
6 S-p-a-d-a-r-o. My address is 8 Acorner Lane, White Salmon,  
7 Washington. I am the Applicant, President of SDS Lumber  
8 Company.

9 (Jason Spadaro sworn on oath.)

10 JUDGE WALLIS: Please proceed.

11 JASON SPADARO,  
12 having been first duly sworn on oath,  
13 testified as follows:

14  
15 TESTIMONY BY JASON SPADARO

16 First, I want to start out by saying why, to talk  
17 a little bit about why we are here, why we have chosen to  
18 apply to EFSEC. You have heard testimony that this may have  
19 been some type of end around to the local planning process  
20 and that's not the case. As Commissioner Richardson has  
21 said in the county's, in his testimony that the county's  
22 certificate of consistency that the county had attempted to  
23 adopt an updated zoning code that would define how and where  
24 the renewable energy would be developed within the county.  
25 That was subsequently overturned by the county's hearing

1 examiner on the issues that you also heard about, but  
2 there's also underlying -- presently a portion of the  
3 property where we want to develop wind energy is on forest  
4 resource and the remainder of it is unzoned, but there's  
5 also a lawsuit against the county for failure to zone that  
6 unzoned property that is currently active and still exists.  
7 So the county had all the good intentions of establishing a  
8 zoning and us the intentions of waiting for the county to  
9 define the procedure that we would have to follow, asked us  
10 at the time that their zoning efforts is bound in court,  
11 asked us to consider them. We also asked them to consider  
12 with us the option of coming to EFSEC.

13           So I want to clarify for the record why we are  
14 here. We appreciate the fact that EFSEC provides some time  
15 certainty in review, and we appreciate the process and we  
16 look forward to it. I want to make one comment, a  
17 correction actually. This will be coming to you in some  
18 errata on the application. The application states that  
19 there is some Residential-10 zoning in the neighboring area  
20 to the project outside the National Scenic Area and there's  
21 the current zoning is actually on this map. The zoning that  
22 was put into the application was the proposed zoning changes  
23 that was reversed by the hearing examiner. So the current  
24 zoning is this map here, the southern south of the power  
25 line that the south power line is stopped to look at the

1 substation. Everything south of that is zoned For/Ag-20,  
2 Forest-Resource/Agriculture-20, and everything north of that  
3 is currently unzoned. The lands south of the National  
4 Scenic Area boundary is zoned large scale agriculture. So  
5 now with that being established as the zoning, I would like  
6 to present some comments about consistency with the forest  
7 resource zone, the unzoned portion, and the land uses and  
8 also the neighboring land use designation of the scenic  
9 area.

10 JUDGE WALLIS: May I interrupt for just a minute  
11 and ask designation. What map? Could you describe or  
12 identify by name the map that you're referring to so when  
13 someone reads the record they'll know to what was referred  
14 to. Do you know if it's contained within the application?

15 MR. SPADARO: It is the map -- thank you. It is  
16 Figure 4.2-4 entitled Skamania County zoning.

17 JUDGE WALLIS: Thank you.

18 MR. SPADARO: It is the portion that's outside of  
19 the National Scenic Area that was proposed to be R-10, but  
20 it's currently Forest/Ag-20 zone. So I want to clarify  
21 that. In terms of consistency with the For/Ag-20 zone as we  
22 saw in the field tour today it is used for forestry  
23 purposes. The For\Ag-20 zone allows forestry and utilities  
24 as a conditional use. In terms of consistency with the  
25 actual practice and use of the land, I've talked about the

1 exhibits that are here as well as I've talked about in my  
2 informational presentation how we plan to practice forestry  
3 around the wind turbines. Actually the only converted  
4 property around each turbine that we considered to be  
5 converted away from resource use and growing some type of  
6 forestry products is a 50-foot radius around the base of  
7 each turbine. On the entire project that would equate to  
8 about ten acres, slightly less than ten acres of lands that  
9 are permanently converted for the life of the project. So  
10 we contend it's consistent with the unzoned portions and the  
11 current uses of those properties for forest resources.

12           Lastly, the property south of the National Scenic  
13 Area boundaries is a combination of large forest and a  
14 portion that has some residences on it in the vicinity where  
15 we look down that's zoned large scale agriculture. I just  
16 wanted to point out that agriculture. Wind turbines are  
17 consistent with agricultural use. That is an agricultural  
18 zone where ag activity such as orchard fans and sprayers and  
19 agricultural sounds and sights and smells can occur as an  
20 outright permitted use, and albeit inside the scenic area  
21 wind turbines are not allowed inside the scenic area. We  
22 are on the outside of that boundary line, the National  
23 Scenic Area. So that's all I wanted to say.

24           MR. McMAHAN: Judge Wallis, Chair Luce, and  
25 Members of the Council, Tim McMahan, for the record. I

1 previously gave you my address. Jason Spadaro was just  
2 telling you about the error on figure 4.2-4. There is a  
3 little blue part of the most southerly portion of the  
4 project. That blue part would have indicated that this was  
5 the Ag-10 I think it is -- or excuse me, Residential-10 or  
6 Residential-10 zoning, and that title was not accurate nor  
7 are those adjacent areas accurate on that map. So this was  
8 potentially a more complicated issue for us having a  
9 residential zoning surge that has never existed, doesn't  
10 exist, is not applicable. So we will enter an errata for  
11 the record.

12 I am going to hand forward Mr. Fiksdal a brief  
13 hearing memorandum I prepared in order to expedite what I'm  
14 doing tonight because in my view where we are right now we  
15 have a land use consistency determination. The  
16 certification has been admitted into evidence and is part of  
17 the record as an exhibit. The WAC as cited by Judge Wallis  
18 is very clear. That's prima facie proof of consistency with  
19 county land use, and at this point in time frankly the  
20 burden of proof shifts to opponents to prove otherwise, and  
21 it is our view that in essence at this point it's a legal  
22 issue.

23 Land use consistency as you know can be resolved  
24 in a number of ways through the process, and ultimately if  
25 there is any inconsistency determined ultimately to resolve

1 in a contested case or some other process between now and  
2 then should the Council wish to initiate that process from a  
3 resolution as you did in the P MEC decision making process,  
4 and that may be appropriate here on some of the issues that  
5 you may see before you, we're certainly prepared to do  
6 whatever we need to do to assist in that process going  
7 forward.

8 I want to just skip over the high points of the  
9 memorandum and what really is the county's consistency  
10 determination. The county has determined the project is  
11 consistent with the 2007 comprehensive plan. The 2007  
12 comprehensive plan lists public utilities and facilities to  
13 its substations as allowed uses within the areas where the  
14 project is proposed.

15 Secondly, the project is proposed by in large with  
16 the exception of the seven turbines, which everybody is  
17 talking a lot about here in the unmapped, unzoned area, and  
18 the only regulation in effect in the county code as a matter  
19 of law is whether or not -- let me back up a second.

20 Any use is allowed unless such a use is determined  
21 by a court order or a court jurisdiction or county ordinance  
22 to be a nuisance. That is the only thing in the unmapped  
23 zone which limits the allowance of a use in the unmapped or  
24 unzoned area period, and that has been certified by the  
25 county commissioners.

1           Third, as to the seven turbines, approximately  
2 seven, we talked about seven, as you know micro siting could  
3 be fewer than seven. But we talked about seven turbines in  
4 the southerly portion that you saw today. Those are allowed  
5 under the county code as a conditional use; meaning a use  
6 that should be allowed and can be conditioned, and the  
7 county has recommended conditioning in signing its  
8 consistency certification. It's also provided you with an  
9 analysis. There's six, I think six criteria in the county  
10 code whereby conditional use should be approved, and they  
11 are recommending that the council find that we are in  
12 compliance with that section of the code.

13           My memorandum also provides a little bit of  
14 information about the legal relationship between the  
15 comprehensive plan and the zoning for non-growth management  
16 act counties, and you have that in front of you, and I don't  
17 at this time want to get into it. If we have to deal with  
18 that in an adjudicative process, we're happy to do that if  
19 we need to.

20           Finally though what I do want to zero in on is  
21 this issue of the National Scenic Gorge Act, the Columbia  
22 River National Scenic Area Act. There is a couple of levels  
23 of inquiry that I think we have before us here under the  
24 NSA.

25           One is does the project as a whole, the facility

1 site which is outside of the NSA, does that energy facility  
2 site itself somehow have to comply with criteria  
3 requirements that are applicable to the regulation of lands  
4 within the NSA? And, secondly, what do we do about this  
5 access road to the associated facility of the project? It's  
6 2.1 miles of private roadway and some lesser distance or  
7 some other potential modifications of the county road that  
8 might be required as the project moves forward. So those  
9 are kind of two discrete questions which I think are  
10 entirely prudent analytically.

11 And to just start here in terms of the  
12 applicability, potential applicability to the NSA and the  
13 facility site itself, I think that the folks who have voiced  
14 that we are regulated by the NSA in those areas which are  
15 outside the jurisdiction boundaries are facing two  
16 inconvenient truths about the NSA.

17 The first inconvenient truth about the NSA is when  
18 Congress enacted the act and the two states adopted a  
19 compact and when the State of Washington adopted legislation  
20 and when the counties all adopted the zoning everybody well  
21 knew that very large structures, large energy structures  
22 have dominated the skyline, would dominate the skyline, and  
23 had been in discussions throughout enactment and adoption of  
24 the NSA. And I'm talking principally transmission lines,  
25 and Congress, the commission in adopting its plan, the

1 legislature, and the counties had the opportunity, Congress  
2 had the opportunity to say new transmission lines that are  
3 sited on the other side of that boundary, new tall  
4 structures sited on the other side of that boundary should  
5 have to comply with requirements of the NSA. Transmissions  
6 were on the table when NSA was formulated. Congress didn't  
7 say that. They said quite the contrary. They said what is  
8 beyond this line is absolutely outside the regulation of  
9 this act. No buffer, no perimeter shall ever be imposed  
10 beyond this line, and that is a matter of state law and it's  
11 a matter of federal law. So that's the Inconvenient Truth  
12 No. 1.

13 Inconvenient Truth No. 2 is in fact even within  
14 the National Scenic Gorge Area, particularly in the general  
15 management area, the GMA here, even within that area the NSA  
16 potentially provides for the siting of transmission lines,  
17 energy facilities, utilities, substations, utilities and  
18 facilities. I don't want to be the applicant to come  
19 forward to any siting body seeking permits for those things,  
20 particularly wind power within the NSA, but there's a  
21 theoretical possibility, and the act provides for very  
22 strict criteria for review of those even within the NSA.

23 So clearly those in Congress formulating the NSA  
24 never hypothesized. They had in front of them concerns  
25 regarding tall structures that theoretically could be

1 considered to be inconsistent with policies of the NSA, and,  
2 number one, it was very clear that the line stops at the  
3 border; and, number two, they actually provided the  
4 opportunity to site them within the NSA under strict  
5 regulatory provisions. So I have, we have a very hard time  
6 understanding how the regulatory requirements of NSA should  
7 be imposed north of that line and into the energy facility  
8 site.

9 Now, the second issue which is obviously one of  
10 some concern is what are we going to do about the access  
11 road requirements and how does the Council's preemptive role  
12 under RCW 80.50 how does the Council deal with this issue  
13 that we have regulatory review through the NSA for these  
14 access roads?

15 The county's land use certification certifies  
16 consistency with this NSA for this related to the  
17 transportation route, number one. Number two, who issues  
18 that approval but for this being an EFSEC case? County  
19 staff. County staff without a hearing and from there an  
20 appeal will be taken to the county hearing examiner, then to  
21 the Gorge Commission, then to the trial court, then to the  
22 Court of Appeals, then the Supreme Court. So under 80.50  
23 what is the entity issuing that approval? Is it the  
24 political subdivision of the state of Washington?

25 The county issues that approval. It is our very

1 strong view that the NSA no way changes the mission on  
2 whether the siting Council has authority as an associated  
3 facility for the energy project to fully approve, review --  
4 fully review and potentially approve the roadway siting in  
5 the NSA.

6 Now, I want to be very clear about what we are  
7 suggesting and what we are not suggesting here. What we are  
8 suggesting is that the Siting Council has the authority,  
9 should review it, and, of course, should ultimately approve  
10 the minor modification of this access road in order to  
11 enable transportation of equipment onto the site for the  
12 construction of the energy facility. That is what we are  
13 requesting.

14 We are not requesting that the Siting Council  
15 preempt the National Scenic Area Act. We are not requesting  
16 that the Council exercise preempt authority over the act.  
17 In fact, in our view you should apply the criteria that  
18 would otherwise be applied by the county in considering  
19 those road issues and then appropriately condition based on  
20 your authority under 80.50 to address local concerns.

21 So I want to be very clear we are not coming in  
22 here saying we want to establish a precedent that you  
23 preempt the Gorge Act. That is not what we're saying. We  
24 are talking a procedural issue and who is the decision  
25 maker, and the decision maker but for EFSEC authority under

1 RCW Chapter 80.50 would be the county planning director.

2 With that, that is all I have. I would be happy  
3 to answer any questions. I also would request the  
4 opportunity, and it's going to be hard to know where this  
5 goes from here in terms of the EFSEC process, but I would at  
6 least request the opportunity to rather than having to take  
7 time getting up in some responsive response at the end of  
8 the hearing to have the opportunity to submit some written  
9 response if the Council deems that appropriate at the end of  
10 the hearing.

11 JUDGE WALLIS: Very well. Thank you.

12 MR. McMAHAN: Thank you very much.

13 CHAIR LUCE: I think it's fair to say,  
14 Mr. McMahan, that the Council, at least this member of the  
15 Council, will have some questions regarding the legal issues  
16 that you propounded and the relationship between the Council  
17 and the National Scenic Act of the Gorge Commission. So you  
18 were correct in anticipating that we will have some  
19 questions.

20 MR. McMAHAN: I'm finding it hard to imagine  
21 you're going to resolve all this without some briefing from  
22 all lawyers involved.

23 CHAIR LUCE: I think that's a fair consideration.

24 JUDGE WALLIS: It would be my recommendation to  
25 the Council to review and consider the testimony and the

1 evidence and the argument that its receiving and then follow  
2 up with an opportunity for additional briefing.

3 MR. McMAHAN: Thank you, sir.

4 JUDGE WALLIS: At this point I would like the  
5 Council members to introduce themselves to the people who  
6 are here this evening.

7 MS. McDONALD: Mary McDonald, Department of  
8 Natural Resources.

9 MR. FRYHLING: Dick Fryhling, Department of  
10 Community Trade and Economic Development.

11 CHAIR LUCE: Jim Luce, Chair.

12 MR. BYERS: Dick Byers, Washington Utilities and  
13 Transportation Commission.

14 MR. TAYER: Jeff Tayer representing the Washington  
15 Department of Fish and Wildlife.

16 MS. WILSON: Judy Wilson appointed by Skamania  
17 County Commissioners to represent Skamania County.

18 JUDGE WALLIS: And Council staff?

19 MR. LA SPINA: Jim La Spina, EFSEC staff.

20 MR. FIKSDAL: Allen Fiksdal, EFSEC manager.

21 JUDGE WALLIS: Tammy Talburt is the lady at the  
22 back of the room who's been assisting people with  
23 registration for speaking this evening and finding  
24 information. The gentleman seated next to me is?

25 MR. CREWS: Kyle Crews, Assistant Attorney

1 General.

2 JUDGE WALLIS: Thank you very much. At this point  
3 as I mentioned earlier during the public testimony sessions  
4 two gentlemen indicated that they were attorneys  
5 representing groups who had an interest in this application.  
6 I would like to afford them the opportunity to make  
7 presentations at this point and would ask first Friends of  
8 the Gorge is there a representative here?

9 Before we begin your presentation I would like you  
10 to note that there are two microphones in front of you. The  
11 smaller one on the desk stand is for TVW. The larger one on  
12 the floor stand is so that everyone in the room can hear  
13 you. What I will try to do is encourage anyone who is  
14 speaking to the group to use the larger microphone and we  
15 will try to let you know if we understand that you're not  
16 being heard by people in the room.

17 We are having some material distributed. Rather  
18 than have that as a distraction from the presentation we'll  
19 wait until that's done.

20 Are you ready to proceed?

21 MR. KAHN: Yes.

22 JUDGE WALLIS: Are you an attorney representing  
23 the group?

24 MR. KAHN: Yes, I am. My name is Gary Kahn, and  
25 I'm an attorney in private practice in Portland representing

1 Friends of the Columbia Gorge.

2 JUDGE WALLIS: Could you state your office address  
3 for our court reporter.

4 MR. KAHN: Yes. Mailing address is P.O.  
5 Box 86100, Portland, Oregon 97286, and for the record my  
6 name is Gary Kahn. I'm an attorney representing Friends of  
7 the Columbia Gorge, with me is Nathan Baker who is a staff  
8 attorney for the Friends of the Columbia Gorge. I am going  
9 to address the issue of land use consistency with respect to  
10 the scenic area. Mr. Baker is going to briefly address  
11 other aspects of the county code and how it comes into play.

12 JUDGE WALLIS: Your presentation is going to be  
13 given in the form of a legal argument rather than testimony?

14 MR. KAHN: Mine is, yes.

15 JUDGE WALLIS: Very well. If you do get to the  
16 point where you are offering testimony, I would like to  
17 swear you in.

18 MR. KAHN: That's fine. I have no problem with  
19 that.

20 JUDGE WALLIS: I would also like you to recognize  
21 that our court reporter has been faced over the past two  
22 days with some very fast talking people, and I think her  
23 fingers are numb. I know you have a great deal of thoughts  
24 to present to us, but we will understand better and I think  
25 our court reporter will better be able to take it down if

1 you pace yourself and try not to say everything in the four  
2 minutes that has been our standard to date.

3 MR. KAHN: I do have a tendency to talk fast and I  
4 will do my best not to do so here. Feel free to wave at me  
5 if I'm going too fast.

6 As I mentioned, I represent the Friends of the  
7 Columbia Gorge. Friends is a nonprofit organization with  
8 approximately 5,000 members worldwide dedicated to  
9 protecting and enhancing the resources of the Columbia River  
10 Gorge. Friends' membership includes hundreds of citizens  
11 who reside within the Columbia Gorge National Scenic Area as  
12 well as outside the scenic area.

13 JUDGE WALLIS: Slow down a little bit.

14 MR. KAHN: Friends supports renewable energy  
15 development so long as the projects are responsibly sited  
16 and comply with all applicable laws. My client Friends  
17 opposes this particular project as it is currently proposed.  
18 SDS Company, LLC, must modify the application to better  
19 address the applicable review criteria to remove all  
20 portions of the project that are within the National Scenic  
21 Area and to substantially reduce the impacts of the project  
22 on the scenic natural, cultural, and recreational resources.

23 With respect to consistency with the land use  
24 laws, the application contains a fatal flaw. A part of the  
25 project is to be located within the National Scenic Area.

1 Under scenic area rules the entire project because it is  
2 power generation is classified as an industrial use. Under  
3 the scenic area rules both the act and the ordinances  
4 implemented industrial uses are prohibited within the  
5 general management areas of the scenic area, and the land in  
6 question here that we're concerned about is the general  
7 management area. Despite this prohibition SDS proposes to  
8 construct and use more than two miles of the roads within  
9 the general management area for industrial purposes.

10 In both the National Scenic Area and in Skamania  
11 County generally both the construction and the use of roads  
12 must be reviewed for consistency with the Scenic Area Act  
13 and its implemented ordinances. I've attached as Exhibit A  
14 to my testimony, which I believe you all have, a letter from  
15 2002 to the Columbia River Gorge Commission discussing the  
16 requirements to review roads within the National Scenic Area  
17 for their intended use. The Gorge Commission reached a  
18 conclusion that the use of a road is paramount to  
19 determining whether the use is allowed. In a recent federal  
20 court decision also in my material Friends of the Columbia  
21 Gorge vs. U.S. Forest discusses the same requirement. A  
22 copy of that decision is attached and holds that when the  
23 use of a road changes from one type of use to another that  
24 change in use must be reviewed for consistency with the  
25 National Scenic Area Act.

1           Similarly to this requirement Skamania County  
2 requires its private roads to be classified based on their  
3 primary functions. The county road system has several  
4 different classification categories ranging from private  
5 driveways to commercial development to recreation use.  
6 Proposals to change road use from one category to another  
7 such as residential to commercial triggers a review. In  
8 this case the roads proposed in the scenic area are proposed  
9 specifically for industrial purposes to haul turbines to use  
10 the roads for maintenance and construction of the project.  
11 The applicant proposes to construct new roads and to widen  
12 and improve existing public and private roads converting  
13 them to the uses. These roads will be used to haul wind  
14 energy turbine components and construction material which  
15 are industrial loads that would exceed the WSDOT legal load  
16 limit of 52.75 tons. Simply put this is an industrial  
17 activity.

18           Mr. McMahan, I believe that was his name, the  
19 attorney for the Applicant, talked to you about the buffers.  
20 Some of the stuff he said I would agree with and some I  
21 don't. He said flat out that the Scenic Area Act prohibits  
22 buffers. That's not a hundred percent correct. The Scenic  
23 Area Act clearly states that nothing about this impact can  
24 result in the imposition of buffers. I would agree with  
25 that part. But the point I want to leave you with here is

1 that the Scenic Area Act does not prohibit buffers around  
2 the Scenic Area Act. It does not allow those buffers to be  
3 imposed only in conjunction with the Scenic Act, but if  
4 other grounds exist under SEPA or any of the other statutes  
5 buffers are certainly not prohibited.

6 Mr. McMahan also, if I heard him correctly,  
7 referred to the savings clause in Section 17 of the act and  
8 referred to the fact that existing transmission facilities  
9 are protected. He is correct in that. Under Section 17 of  
10 the act nothing in the -- Congress stated that nothing in  
11 the act shall affect the ability of BPA to maintain or  
12 modify existing transmission facilities which we don't have  
13 to. If I heard Mr. McMahan correctly, I thought he said  
14 that under limited circumstances new transmission facilities  
15 could be sited. If he didn't say that, then I apologize for  
16 the mishearing. If he did say that, I unconditionally  
17 disagree with that. Energy projects are industrial use and  
18 there's no allowance for new industrial uses within the  
19 National Scenic Area.

20 I don't remember his name. The gentleman from  
21 Skamania County talked to you about this consistency  
22 decision that the county reached. We received a copy of  
23 that yesterday for the first time. We have not had an  
24 opportunity to fully evaluate it and would ask that and I  
25 believe this has been addressed that the record be open to

1 allow us to do that at a later date.

2 That concludes my comments. I'm happy to answer  
3 any additional questions. But simply put in the National  
4 Scenic Area perspective part of this project is industrial  
5 use. Industrial use is not allowed. Unless those roads are  
6 removed from the project the Energy Facility Siting Council  
7 cannot find that the decision is consistent with the Scenic  
8 Area Act. Thank you very much.

9 JUDGE WALLIS: Are there any questions from  
10 Council members?

11 It appears there are none.

12 Is your presentation in the nature of testimony or  
13 is it in the nature of argument?

14 MR. BAKER: Legal argument.

15 JUDGE WALLIS: Very well. Would you state your  
16 name and your business address for our record, please.

17 MR. BAKER: Sure. My name is Nathan Baker. I am  
18 a staff attorney for Friends of the Columbia Gorge. My  
19 business address is 522 S.W. Fifth, Suite 730, Portland,  
20 Oregon 97204.

21 I have just submitted a copy for the record of a  
22 letter that we've written on consistency with the  
23 comprehensive plan for Skamania County involving issues  
24 outside of the Scenic Area. Attached to our comments is a  
25 copy of the hearing examiner's decision from the recent

1 appeal on the proposed energy zoning in Skamania County.  
2 That's been referenced several times over the past couple of  
3 days.

4           It's a lengthy comment, but I do want to highlight  
5 two key points for you. Specifically, I want to point to  
6 two of the findings in the hearing examiner's decision. The  
7 first is Finding No. 18 which is on page 8 of her decision  
8 and she talks about the uses that's allowed on the  
9 conservancy designation, and that was the proposed  
10 designation that would have applied to the unmapped lands in  
11 the county. Currently most of the county is unmapped or  
12 unzoned and part of the zoning would have to be rezoned.  
13 That's the whole purpose of the county's energy zoning  
14 proposal was to zone for energy development. And in the  
15 hearing examiner's finding, she discussed, she lists the  
16 uses that are allowed and appropriate under the  
17 comprehensive plan for those lands. And she specifically  
18 refers to public facilities and utilities, not private  
19 facilities and utilities, not semi-private and semi public,  
20 but only public facilities and utilities. If you look at  
21 the definition of public facility and utility it means  
22 publicly owned and operated.

23           SDS is obviously a private company. They would  
24 not qualify. That was the reason why the county  
25 commissioners proposed the zoning change to allow this type

1 of use, and the hearing examiner specifically says that the  
2 comprehensive plan does not contemplate the type of energy  
3 facilities described in the proposed zoning.

4 So, again, on most of the project site this is not  
5 an allowed use under the comprehensive plan, and you're not  
6 to go to the comprehensive plan because there is no zoning.  
7 It's unzoned. And the comprehensive plan controls which  
8 types of uses are allowed.

9 The other point that I wanted to make is involving  
10 currently Skamania County has a moratorium in effect on  
11 various land use and development activities. This is  
12 Finding No. 10 in the hearing examiner's decision. It's on  
13 page 4 of her decision. And she mentions that the  
14 moratorium was adopted on July 10, 2007. That was also the  
15 date of the adoption of the most recent comprehensive plan,  
16 and those who were involved in the adoption of the  
17 comprehensive plan moratorium I believe will acknowledge  
18 that the reason the moratorium was adopted was to slow down  
19 development in the county until the county could actually  
20 zone the unzoned, unmapped lands.

21 And the key portion of the moratorium that is  
22 relevant here, and it's discussed in the hearing examiner's  
23 decision, is that the moratorium prohibits forest practice  
24 conversion. She says that the moratorium prohibits the  
25 acceptance and processing of SEPA checklists related to

1 forest practice conversions. All of us that were out on the  
2 site this morning we could all see the land is forested, and  
3 under the SEPA, under both SEPA and the state forest  
4 practices rules in order to site a new industrial commercial  
5 energy facility on a site forest practice conversions of the  
6 timber on the property would be necessary. That is  
7 prohibited. It has been since July 10, 2007. The  
8 moratorium is still in effect, and I haven't heard it  
9 mentioned by either the applicant or the county, and it's I  
10 believe a direct reason why at this moment as long as the  
11 moratorium is in effect this is not allowed under the county  
12 rules. That's all I have unless there is any questions.

13 JUDGE WALLIS: Thank you.

14 Any questions from the Council members?

15 It appears there are not. Thank you very much.

16 My recollection there's one other group that  
17 appeared by attorney, Save Our Scenic Area. Mr. Aramburu.

18 Would you state your name and spell the last name  
19 for the reporter and state your office address and the name  
20 of the client that you represent.

21 MR. ARAMBURU: Thank you, Mr. Chairman. I'm  
22 Richard Aramburu. My last name is spelled A-r-a-m-b-u-r-u.  
23 My office address is 720 Third Avenue, Suite 2112, Seattle,  
24 Washington 98104. I'm here tonight representing Save Our  
25 Scenic Area, the SOSA group, with respect to this

1 application. I've handed out to members of the Council a  
2 letter from me as well as two attachments to that letter  
3 which I will discuss in my testimony.

4 I'm not going to read the letter and I don't want  
5 to take your time to go through all the details of the  
6 letter. Tonight I want to hit some high points in my  
7 discussion with you. There are a couple preliminary matters  
8 that I would like to discuss.

9 First of all, I would ask that the Chair and the  
10 Council take judicial notice of the 2007 Skamania County  
11 Comprehensive Plan and the existing Skamania County zoning  
12 ordinance which is their Chapter 21. I have not brought a  
13 copy with me. I would be happy to supply copies to the  
14 Council, but I would like the Council to take judicial  
15 notice of that.

16 Is that permissible, Mr. Wallis?

17 JUDGE WALLIS: Is there an objection?

18 It appears there is no objection and notice will  
19 be taken. I do ask you to provide copies of those materials  
20 to the Council.

21 MR. ARAMBURU: I will. Thank you very much.

22 JUDGE WALLIS: In terms of housekeeping, in a few  
23 moments we'll be taking a break so people who wish to  
24 testify will have an opportunity to sign up, and during that  
25 break I would like to talk with counsel and identify the

1 documents that have been presented so far and categorize  
2 them so that we can identify them for the record very  
3 clearly and all of us know exactly what we have. In  
4 addition, I would also like to ask counsel to submit in  
5 digital format any document that is presented tonight so  
6 that it can be quickly and easily posted to the Council's  
7 website.

8 Mr. Aramburu, please continue.

9 MR. ARAMBURU: I'm here tonight to indicate that  
10 the result of our research we found that the proposal of SDS  
11 for approval by this commission is inconsistent to the  
12 county's comprehensive plan and zoning ordinances, and that  
13 this commission should so find and as well there is no basis  
14 upon which this commission should exercise any authority  
15 that it has to preempt. These arguments are found in my  
16 material, and I want to go over them rather briefly to give  
17 you a brief background of planning and zoning in Skamania  
18 County.

19 I'm from Seattle. In Seattle we operate under the  
20 Growth Management Act. Skamania County does not, even  
21 though it could choose to be a growth management county. It  
22 operates instead under RCW 36.70 which for those of us who  
23 have been in land use for any time it's sort of the ancient  
24 mechanism for planning. The State of Washington adopted the  
25 WAC in 1963. 36.70 is a statute that requires a

1 comprehensive plan to be developed but does not  
2 interestingly enough for land use lawyers does not require  
3 zoning to be adopted.

4 Skamania County first adopted the comprehensive  
5 plan in 1977, and the bound document that I have provided to  
6 you tonight is a copy of that 1977 comprehensive plan. The  
7 copy that we pulled together for tonight was a result of  
8 receiving materials from the county yesterday, their  
9 Ordinance 2009-22. It actually was one that was used by one  
10 of the planning commissioners. So the copy you have is mine  
11 is marked up and those comments should be disregarded for  
12 purposes of your review of the plan. I hope there's not  
13 anything improper in that material. But, in any event, that  
14 plan was adopted in 1977.

15 In about 1985, the county adopted its first set of  
16 zoning and the zoning has been amended over time, but the  
17 comprehensive plan there's a couple of changes that has not  
18 been amended until 2007. In 2007, the county adopted its  
19 new comprehensive plan. The county also attempted to adopt  
20 new zoning for the county as a result of its comprehensive  
21 plan, perfectly appropriate matter to be done, but to do  
22 that one has to comply with the state law. And it has been  
23 described previously the county did not comply with SEPA in  
24 its application and review of the comprehensive plan, and  
25 accordingly the hearing examiner for Skamania County had

1 ruled that no further progress could be made on that zoning  
2 ordinance until an environmental impact statement could be  
3 done. We now learn that apparently the zoning ordinance has  
4 been permanently, to use the planning director's words,  
5 shelved, and we don't know when its going to be resurrected.  
6 But that is the current status of that code.

7 Now, one of the things that's important about how  
8 we feel the Council should approach this is that the Council  
9 must look at the codes, comprehensive plans that are  
10 affected. We know Commissioner Richardson was here tonight,  
11 and he seems to be an outspoken advocate of wind power  
12 within the county. He has various wishes that he expressed;  
13 however, this commission is bound by the written documents  
14 that had been officially approved by Skamania County and not  
15 by the wishes of the commission.

16 The first point I wish to make, and this is for  
17 those of you who want to follow along on page 4 of my  
18 submission to you, is the wind turbine proposal is not  
19 consistent with the existing comprehensive plan of the  
20 county. In particular, Mr. Baker addressed this a bit, and  
21 I won't repeat what he said, but the 2007 comprehensive plan  
22 has three land use designations, none of which mention wind  
23 turbines, none of which mention wind power, none of which  
24 mention private utilities. They refer only to public  
25 utilities in a set of uses within those public utilities

1 that are commonplace in ordinary uses: schools, parks,  
2 access, utility substations. Nothing that would approach in  
3 any manner large scale wind turbines 426 feet high over  
4 several miles of landscape in Skamania County and proposed  
5 for more than 50 of these.

6 We also note that the county has an obligation  
7 under the Growth Management Act under section 170 of the  
8 act, that is also on page 4, to designate forest land within  
9 the county, forest lands of long-term commercial  
10 significance. We don't find the official resolution  
11 ordinance of the county does that, but we do believe that  
12 the 2007 comprehensive plan essentially does that by taking  
13 a large portion of the county, including the area in which  
14 most of these wind turbines are found, and designating them  
15 in the conservancy zone. In the conservancy zone as the  
16 comprehensive plan says it is intended for the long-term  
17 development and use for timber purposes, not for other  
18 purposes. So we think that that amounts to compliance with  
19 Section 170 of the plan.

20 Now, the comprehensive plan also there is a  
21 discussion here by the applicant and Mr. McMahan's testimony  
22 to you tonight that the comprehensive plan should be  
23 interpreted to allow private or semi-private facilities and  
24 utilities. That's not what the comprehensive plan says. It  
25 refers to public facilities. As you will notice from

1 reading my materials, semi-public facilities are a part of  
2 the county's ongoing zoning code. It's right there in the  
3 code. If the county commissioners would have intended that  
4 these semi-public facilities should be allowed under the new  
5 comprehensive plan, it had it right in front of its zoning  
6 code that definition, but that definition was not put into  
7 the comprehensive plan. No one said anything about wind  
8 turbines, electrical energy facilities, or any such thing.  
9 The comprehensive plan as adopted does not permit these  
10 activities. This was not a matter of oversight either  
11 because as the hearing examiner found in her decision on  
12 page 13 that the county had been approached repeatedly by  
13 these applicants since about 2002 to have preapplication  
14 conferences about wind turbines. And so the matter of wind  
15 turbines was before the county, before the county planning  
16 director who met with these people concerning this. So the  
17 idea that we just didn't think of wind turbines is not the  
18 case in these circumstances.

19 Now, under the growth -- not the growth management  
20 act. Under RCW 36.70 it is the obligation of each planning  
21 agency to prepare a comprehensive plan. Under 36.70.450 --  
22 this is probably on page 7 and 8 of my materials, if you  
23 would like to follow along. RCW 36.70.450 says the plan  
24 agency shall use such plan as a basic source of reference  
25 and is a guide in reporting upon or recommending any

1 proposed project, public or private. So it is the  
2 comprehensive plan that's a guide to county decisions in a  
3 36.70 county. As we point out on page 8 zoning codes are  
4 not required in 36.70 counties. The statute says that the  
5 planning agency may adopt zoning codes.

6           The one thing that is true is that if the county  
7 decided to adopt the zoning code it must be consistent with  
8 its comprehensive plan. The county apparently makes the  
9 argument that its old comprehensive plan adopted under the  
10 1977 -- excuse me, that the current zoning code adopted  
11 under the old comprehensive plan should suffice for  
12 compliance with its new comprehensive plan. That is simply  
13 not possible because the old comprehensive plan is old.  
14 I'll point out in a moment that is a very different  
15 circumstance and there's nothing in the new comprehensive  
16 plan that permits wind turbines, wind energy, all energy  
17 facilities, or anything else, even though it's clearly been  
18 put into the code.

19           Now, I think what's particularly compelling with  
20 regard to the consistency issue and with respect to  
21 comprehensive plans and zoning is how the current  
22 comprehensive plan differs from the 1977 comprehensive plan.  
23 If you'll turn to page 92 of the bound document that I gave  
24 you, I'd like just to take a moment to highlight this point.  
25 In the 1977 comprehensive plan the Skamania County

1 Commissioners adopted a conservancy designation for the  
2 comprehensive plan which allowed on a conditional use basis,  
3 industrial and commercial usage. It went on to say that  
4 these uses which may be considered to be inappropriate could  
5 be established if they were approved specifically by the  
6 commissioners. So industrial, commercial use is permissible  
7 under the comprehensive plan if approved by the county  
8 commissioners.

9           You then look at the 2007 comprehensive plan,  
10 30 years later. The 2007 comprehensive plan believes any  
11 reference to commercial or industrial use as being  
12 permissible within the conservancy zone is entirely false,  
13 and the only reason a conclusion could be drawn from that is  
14 that there was a deliberate intent of the commissioners to  
15 remove the possibility of such uses within the conservancy  
16 zone. Instead the conservancy now only allows a series of  
17 benign public uses within the zones but makes no reference  
18 to any kind of industrial or commercial uses within that  
19 area.

20           Similarly, the 1977 comprehensive plan, turning  
21 back now to page 91, specifically references semi-public  
22 activities. Semi-public activities being hospitals,  
23 churches, other such activities as permissible at least in  
24 the rural zone; however, the reference to semi-public  
25 facilities and utilities is entirely illegal from the 2007

1 comprehensive plan, again indicating the intent of the  
2 commissioners to remove that as permissible uses within the  
3 comprehensive plan. The hearing examiner specifically  
4 found -- because this issue was actually litigated. Because  
5 when we were in the hearing with the hearing examiner the  
6 county prosecutor said, "Do not grant the appeal of SOSA and  
7 Friends because we're not really changing anything. All  
8 these activities are already permitted in our codes under  
9 our comprehensive plan so we're not having any significant  
10 impact because nothing has changed." The hearing examiner  
11 directly disagreed with that proposition, and she said --  
12 this is very important for your review -- the 2007  
13 comprehensive plan does not contemplate the type of energy  
14 facilities described in the planning commission recommended  
15 draft of the zoning code, does not contemplate. Wind  
16 turbines is not contemplated within the comprehensive plan.  
17 So there's a clear finding by the hearing examiner.

18 Now, there has been some reference here from  
19 Commissioner Richardson's comments tonight about the ongoing  
20 zoning code that had been developed by the county that was  
21 now subject to this SEPA appeal which we were successful in.  
22 He I guess is trying to convince the Council that you ought  
23 to consider what was in that code is what we were really  
24 intending to do. There are two reasons why that can't be  
25 done.

1           First of all, when you look at the letter that you  
2 received tonight from the planning director of Skamania  
3 County she says don't consider that code at all. So there's  
4 a conflict in what's coming from the county.

5           But the second reason and the most obvious one is  
6 that you can't consider it because it hasn't been adopted.  
7 This is not some other regulation where you get to sort of  
8 consider what's being thought about. If you're going to  
9 consider the codes, they have to be adopted.

10           I'm not going to address the scenic issues. We  
11 are going to leave those to the Friends to discuss. We just  
12 got the certificate of land use consistency from the county  
13 yesterday. We would very much appreciate the opportunity to  
14 have some more time to address those issues in that 29-page  
15 document and we will do that in more detail.

16           But I do want to say one thing about the way the  
17 county has gone about this. The county has produced a  
18 comprehensive plan that contains no references to wind  
19 turbines and alternative energy, geothermal energy, or  
20 anything else. And when they did that, they brought it up  
21 to the public as a benign code. Now, what we're seeing is  
22 the county through this certificate of land use authority is  
23 trying to come in the back door. They can't get in the  
24 front door because they haven't done -- they haven't  
25 complied with state law. They haven't complied with SEPA.

1 Now they want to come in the back door by saying, "Oh, well,  
2 it really is consistent with our codes."

3 Well, one of the reasons you can't allow that to  
4 happen is that public agencies and governments should be  
5 honest about what they're intending in their codes, and if  
6 they're going to intend in their codes to allow wind  
7 turbines then they better say so. If they're not going to  
8 allow it, if they don't put those in the codes and don't  
9 alert people to the concerns about that because I can tell  
10 you that if wind turbines were put in the comprehensive plan  
11 as a use anywhere you would have had the same kind of  
12 discussion and public concern you have now, but they didn't  
13 do that. So they're bound by that comprehensive plan. That  
14 comprehensive plan did not allow those activities, and this  
15 application is inconsistent with the comprehensive plan.

16 I'm concluded. I probably took a little longer  
17 than I should. I ask that you do review in detail the  
18 materials before you. I've also supplied yet another copy  
19 of the hearing examiner's very carefully worded decision.  
20 That is going to be relevant to you in making scoping  
21 decisions so please take the time to read it. It's a very  
22 carefully written document, and I have concluded unless you  
23 have questions for me. And I understand we're going to have  
24 the opportunity to provide some more material and we are  
25 going to do that. So if there is any questions, I would be

1 happy to answer them.

2 JUDGE WALLIS: Let me ask if any Council member  
3 has any question for Mr. Aramburu?

4 It appears that there are no questions.

5 MR. ARAMBURU: Thank you.

6 JUDGE WALLIS: Thank you for your presentation.  
7 At this time I would like to take a brief break. For anyone  
8 who has not signed up, in the back of the room if you would  
9 like to testify we have a sign-up sheet back there. I will  
10 remind folks that our topic for consideration tonight is  
11 whether or not the proposed project complies and is  
12 consistent with the local and regional land use  
13 requirements. So let's be off the record, please, and,  
14 Counsel, approach the bench for a moment, please.

15 (Recess taken from 7:50 p.m. to 8:00 p.m.)

16 JUDGE WALLIS: During our recess there was a  
17 colloquy which documents earlier submitted have been  
18 identified through exhibits. Counsel have all agreed to  
19 provide digital copies, and within a day of two of those  
20 being received by the Council they will be posted on the  
21 Council's website so everyone will have access to them.

22 We are calling Land Use Exhibit 1 the document  
23 that was received from the county with the certification.  
24 Land use Exhibit 2 the Applicant's memorandum. Land Use  
25 Exhibit 3 is Mr. Kahn's legal memorandum. Land use

1 Exhibit 4 is Mr. Kahn's submission to Mr. Fiksdal, 13 pages  
2 with an attachment. Land Use Exhibit 5 is Mr. Aramburu's  
3 memorandum with two attachments. You will soon find those  
4 on the Council's website.

5 (Land Use Exhibit No. 1 admitted into evidence.)

6 (Land Use Exhibit Nos. 2 through 4 marked for  
7 identification and admitted into evidence.)

8 JUDGE WALLIS: Now, we're going to move to public  
9 testimony. I have a sheet here with a number of names on  
10 it, and I'm going to call persons to the stand to offer  
11 testimony. Again, I want to remind you that the only issue  
12 we have tonight is whether the proposed project is  
13 consistent with local and regional land use requirements.  
14 That is the only question of which we can hear comments  
15 tonight. People who did participate in the earlier sessions  
16 in which testimony on any relevant issue was received who  
17 wishes to add material to their earlier presentations or  
18 people who do want to comment can submit those in writing  
19 and those will be received by the Council no later than the  
20 18th of May.

21 So the first person on our list is Mr. Crumpacker.  
22 Would you step forward, please. Mr. Backus, Frank Backus  
23 who will be next and Mr. Rich Potter after Mr. Backus.

24 Mr. Crumpacker, for this proceeding we are putting  
25 witnesses under oath. I'd like to ask you to raise your

1 right hand.

2 (John Crumpacker sworn on oath.)

3 JUDGE WALLIS: Please state your name and spell  
4 your last name for this record.

5 MR. CRUMPACKER: My name is John Crumpacker. My  
6 last name is spelled C-r-u-m-p-a-c-k-e-r. My address is  
7 P.O. Box 100, Underwood, Washington.

8 JUDGE WALLIS: Please proceed with your testimony  
9 on the issue of consistency of the project land use  
10 requirements.

11 JOHN CRUMPACKER,  
12 having been first duly sworn on oath,  
13 testified as follows:

14  
15 TESTIMONY OF JOHN CRUMPACKER

16 Thank you. I'm a member of the Board of Directors  
17 of the Skamania County Agri-Tourism Association. The  
18 Skamania County Agri-Tourism Association is a Washington  
19 non-profit corporation dedicated to the promotion and  
20 improvements of sustainable agri-tourism in Skamania County.  
21 Our mission is to create and maintain favorable business  
22 conditions for association members. All members own and  
23 operate agricultural businesses in Underwood, Washington,  
24 which is located in eastern Skamania County.

25 Again, I gave a list of members last night. I

1 would like to do that again for the Council to know the  
2 breadth of our membership. The members of the Agri-Tourism  
3 Association include: Acadia Vineyards, a 75-acre vineyard  
4 and orchard; Crooked Acres Vineyard, a 20-acre vineyard; The  
5 Davis Family Farm, a 50-acre farm and orchard; Energeia  
6 Vineyards, a 64-acre vineyard; Gorge Crest Vineyards &  
7 Winery, a 41-acre vineyard, winery, and commercial event  
8 site; Gorge Estate Vineyards, a 95-acre vineyard and winery;  
9 Lamonti Vineyards, a 32-acre vineyard; Pearblossom  
10 Vineyards, an 18-acre vineyard and orchard; Sanctuary Herb  
11 Farm, an 18-acre herb farm and vineyard; Soluna Vineyards, a  
12 34-acre vineyard; Underwood Gardens, a 6-acre lavender farm;  
13 Wine Spring, a 40-acre vineyard.

14 The Agri-Tourism Association is here today to  
15 provide the Council with our comments on the land use  
16 consistency issues posed by the Whistling Ridge project and  
17 the potential impact on our members. In our scoping  
18 comments yesterday we provided the Council with information  
19 established through the following five facts which are  
20 indispensable for the land use issues tonight.

21 Those facts are as follows: That tourism is the  
22 lifeblood of Skamania County and all communities throughout  
23 the Columbia River Gorge. Number two, agri-tourism is  
24 presently the driver of tourism in the Hood River Valley and  
25 Underwood is well on its way to duplicate that economic base

1 successfully through Skamania County. Number three, that  
2 Underwood's historic preservation of pear orchards to  
3 agri-tourism as well as the premier wine producing region in  
4 the world has the most present day socioeconomic value.

5 JUDGE WALLIS: Mr. Crumpacker, I don't want to  
6 interrupt you unnecessarily, but our issue this evening is  
7 the relationship between the proposed project and the land  
8 use requirements. If you would address that issue, please.

9 MR. CRUMPACKER: Yes, I can. The reason I was  
10 mentioning these points is because they're germane to the  
11 entire analysis under the conditional use requirements, but  
12 I can move on if you like.

13 JUDGE WALLIS: Please.

14 MR. CRUMPACKER: Thank you. Skamania County  
15 Agri-Tourism Association also has requested permission from  
16 the Council to intervene in these proceedings pursuant to  
17 WAC 463.30.091 in order to protect our interest during these  
18 proceedings. Finally, it was stated on the record last  
19 night this association has voted now to support this project  
20 if the Council or the applicant of its own accord makes a  
21 responsible mitigation decision and re-sites seven "A  
22 Towers" to eliminate the negative impacts. Today we will  
23 again confine our comments to the seven "A Towers".

24 We will address the two issues: Why the proposed  
25 "A Towers" are inconsistent with the county land use policy

1 and why simply moving them prevents these violations.

2 In the land use portion of its application SDS  
3 suggests that this project will diversify the use of its  
4 land and in turn the county's economy. Next, they state  
5 that this natural resource-based land use would better  
6 insulate the applicant from economic cycles that have  
7 undermined similar timber operations. What they don't  
8 mention is the "A Towers" would sit on land that is  
9 specifically set aside for just the opposite purpose: to  
10 protect and insulate existing uses such as the agricultural  
11 operations of the members of the Skamania County  
12 Agri-Tourism Association, operations which continue to  
13 diversify the county's tourism-based economy and barring the  
14 "A Towers" are not at risk of economic failure.

15 We will discuss the applicant's claims in the  
16 order they are presented in Part 4.2 of the application  
17 which addresses whether the "A Towers" would comply with the  
18 controlling conditional use requirements.

19 The first requirement that the seven "A Towers" be  
20 either compatible with other uses in the surrounding area or  
21 are no more incompatible than other outright permitted uses  
22 in the applicable zoning district.

23 The applicant, and for that matter, the county,  
24 never took the time to study the socioeconomic value of  
25 agri-tourism and why the "A Towers" are incompatible with

1 such outright permitted uses. Our appendix of data  
2 submitted last night establishes complete incompatibility  
3 and is based on research conducted by the U.S. Government,  
4 the State of Washington, and the State of Oregon. This is  
5 not a wheat field surrounded by nothing. The "A Towers"  
6 would loom over one of the county's premier winemaking  
7 regions and the most valuable agri-tourism land in Skamania  
8 County.

9 To claim that these towers are no more  
10 incompatible with the surrounding area than other uses  
11 permitted in the County's zoning code is uninformed. To say  
12 that this project would in no way impair the use of any of  
13 the surrounding lands as the applicant does conveniently  
14 ignores the years of work and the capital invested by  
15 members of the Agri-Tourism Association, not to mention the  
16 high regulatory hurdles we've all so painstakingly cleared.  
17 The fact is that nowhere in this state have 426-foot  
18 turbines been approved as permanent fixtures on a ridge with  
19 such profound compatibility concerns.

20 The next requirement is that the project not  
21 materially endanger the health, safety, and welfare of the  
22 surrounding community to an extent greater than that  
23 associated with other permitted uses in the applicable  
24 zoning district.

25 The seven "A Towers" are the single greatest

1 threat to the economic welfare of the Agri-Tourism community  
2 in Underwood. Our comments yesterday addressed this issue  
3 and no more need to be said tonight.

4 Next, the project may not hinder or discourage the  
5 development of permitted uses on neighboring properties in  
6 the applicable zoning district as a result of the location,  
7 size, or height of the buildings, structures, walls, or  
8 required fences or screening vegetation to a greater extent  
9 than other permitted uses in the applicable zoning district.

10 The application states that the turbines in the  
11 corridor proposed in the For/Ag-20 zones will be  
12 approximately 426 feet tall and that "the proposed turbines  
13 would be taller than any other structures permitted outright  
14 in the Forest/Ag-20 zone." The application claims that  
15 their height and visibility would not hinder or discourage  
16 the development of any of the uses identified in Table  
17 4.2-2. Just the opposite is true. Commercial agriculture,  
18 a permitted use in Table 4.2-2, is the very basis of  
19 agri-tourism which as proven in Hood River can drive the  
20 economy of an entire county. As established in the data we  
21 submitted yesterday the seven "A Towers" are incompatible  
22 with agri-tourism and have therefore caused a number of  
23 wineries to table their development plans.

24 This Council deserves better than applicant's bare  
25 claim that the project would in no way hinder the use or

1 development of surrounding properties.

2 The last of the conditional use requirements for  
3 the "A Towers" leads us to the policies behind our county's  
4 land use law. That requirement is that this project shall  
5 not be in conflict with the goals and policies expressed in  
6 the current version of the county's comprehensive plan.

7 The policies behind the Forest/Ag-20 zone more  
8 clearly explains why the "A Towers" don't belong. That  
9 states that the policy is to provide land for present and  
10 future commercial farm and forest operations in areas that  
11 have been and are currently suitable for such operations and  
12 to prevent conflicts between forestry and farm practices in  
13 nonresource production uses by not allowing inappropriate  
14 development. This is a clear statement that the conflict  
15 the "A Towers" create should not be allowed by the Council.

16 This same conclusion must be reached by applying  
17 the county's own vision statement for our community.

18 Skamania County is strongly committed to protecting our  
19 rural character and natural source based industry while  
20 allowing for planned future development that is balanced  
21 with the protection of critical resources and ecologically  
22 sensitive areas while preserving the community's high  
23 quality of life.

24 As you may have gathered the "A Towers" are very  
25 different. They're different than the rest of this project,

1 and they deserve to be treated differently. Thank you.

2 JUDGE WALLIS: Just a minute, Mr. Crumpacker. Let  
3 me ask first if there are questions of Council members, by  
4 Council members for Mr. Crumpacker?

5 Mr. Crumpacker, we have indicated to other  
6 organizations that represented earlier that they would have  
7 the opportunity to present legal argument on the issue of  
8 consistency, and as you have specifically addressed that  
9 issue in some detail in that you're representing a  
10 constituency with interest, you I believe should have the  
11 opportunity to join in that if you so desire.

12 MR. CRUMPACKER: Thank you. We would ask that we  
13 be given that opportunity, and as you know I'm not familiar  
14 with the EFSEC process in detail, but we have mentioned our  
15 desire to gain intervenor status and pending that decision  
16 which I understand is discretionary and something the  
17 Council needs to consider we very much appreciate being  
18 included.

19 JUDGE WALLIS: Will you please provide your  
20 contact information to Mr. Fiksdal and you will be advised  
21 of a scheduling conference to determine a briefing schedule.

22 MR. CRUMPACKER: Thank you. I feel I should  
23 inform the Council that I am an active attorney here in the  
24 state of Washington, as well as in Oregon, California, and  
25 Colorado. I'm not here in that capacity, but I do feel that

1 I can hopefully live up to the requirements that you would  
2 have of our organization in that regard.

3 JUDGE WALLIS: Very well, thank you.

4 Next, Mr. Backus.

5 MR. BACKUS: My name is Frank Backus, B-a-c-k-u-s.  
6 I live at 551 Highway 141, White Salmon, Washington. I'm  
7 here. My testimony is short again this evening like it was  
8 earlier today. I believe that --

9 JUDGE WALLIS: Mr. Backus, will you raise your  
10 right hand, please.

11 (Frank Backus sworn on oath.)

12 JUDGE WALLIS: Please proceed.

13 FRANK BACKUS,  
14 having been first duly sworn on oath,  
15 testified as follows:

16

17 TESTIMONY OF FRANK BACKUS

18 I believe that this wind project is compatible.  
19 The surrounding area and closest adjoining lands are either  
20 forest or agriculture and wind generation is compatible with  
21 both uses. There has been much said about the residents  
22 that are in close proximity to the project, and I would  
23 remind the panel that all those houses are in conjunction  
24 with agriculture and their existence in the Columbia River  
25 Gorge have to be tied with agriculture use, and the farming

1 activities near those houses many of them are more intrusive  
2 and much closer to the residents than are the windmills, and  
3 so they are conditional uses in that area too.

4 As stated in the application Mr. Spadaro has  
5 explained today how the forest will continue to be  
6 productive in and around the turbines and I concur that is  
7 very much possible because I've been a forester for  
8 40 years.

9 I want to touch a little more this evening on the  
10 Columbia River Gorge National Scenic Area and how that has  
11 been brought here on this issue. It never seems to amaze me  
12 whenever an area like the Columbia River Gorge or the  
13 National Scenic Area or farming and wells in this area is  
14 created how different people perceive the boundaries of  
15 those areas. To many of us it means that within those areas  
16 there's going to be restrictions put on what can be done in  
17 those areas and none of us in this group would go and  
18 propose clear cuts in the wilderness. We know it's not  
19 going to be allowed and none of us would go propose wind  
20 turbines in the National Scenic Area because we know that  
21 the applicant would not. The other group of people believe  
22 that within that boundary they're going to push for the  
23 toughest regulation they can possibly establish and then go  
24 to the boundary and draw the loop as far as they can and try  
25 to regulate everybody on the outside of that boundary.

1           SDS and any other landowners here in the Gorge  
2     have suffered untold losses in values of their property due  
3     to the National Scenic Area Act, and for those landowners  
4     who own property adjacent to that boundary to be asked to  
5     suffer economic harm because they're adjacent to that  
6     boundary as far as I'm concerned is beyond the table. This  
7     has been a very, very contentious issue here in this area  
8     and the boundary as I said today, the boundary is the  
9     boundary so I hope you give that due consideration. Thank  
10    you very much.

11           JUDGE WALLIS: Thank you, Mr. Backus.

12           Rich Potter is next. After Mr. Potter is Peggy  
13    Bryan.

14           (Rich Potter sworn on oath.)

15           JUDGE WALLIS: State your name and spell it for  
16    our record and state your address, please.

17           MR. POTTER: Rich potter, P-o-t-t-e-r. I live at  
18    P.O. Box or my mailing address is Box 125 in Underwood.

19           JUDGE WALLIS: Please proceed.

20                        RICH POTTER,

21                        having been first duly sworn on oath,

22                        testified as follows:

23

24                                TESTIMONY OF RICH POTTER

25                        I'm here as a legal resident of Underwood,

1 Washington to endorse the actions of the applicant and the  
2 county, and I believe that this is consistent and compatible  
3 to the local and regional land use requirements. And as a  
4 forester with over 40 years of experience I believe that  
5 there's nothing that's incompatible with this project for  
6 the adjoining agriculture uses of the property within the  
7 boundaries of this project, and that's all I have to say.

8 JUDGE WALLIS: Thank you very much.

9 MR. POTTER: Thank you.

10 JUDGE WALLIS: Peggy Bryan. After Ms. Bryan will  
11 be Wilbur Slockish.

12 (Peggy Bryan sworn on oath.)

13 JUDGE WALLIS: State your name and spell your last  
14 name and state your address, please.

15 MS. BRYAN: Thank you. My name is Peggy Bryan,  
16 B-r-y-a-n. I'm at Post Office Box 436 in Stevenson,  
17 Washington.

18 JUDGE WALLIS: Could you move a little bit closer  
19 to the microphone.

20 MS. BRYAN: I'm short.

21

22 PEGGY BRYAN,

23 having been first duly sworn on oath,

24 testified as follows:

25 ///

1 TESTIMONY OF PEGGY BRYAN

2 I am representing the Skamania County Economic  
3 Development Council. I'm also a resident of Skamania County  
4 and I support as an individual resident the project and the  
5 Economic Development Council supports the Whistling Ridge  
6 Wind Energy Project.

7 I'd like to take this opportunity to address land  
8 use issues as it relates to agri-tourism and uses of the  
9 property adjacent to the wind site. I visited the Wild  
10 Horse Wind Energy Project in Kittitas County last month and  
11 took the opportunity to tour the visitor's center. As  
12 Skamania County, Kittitas County relies heavily on tourism  
13 and the dollars produced by that economic sector as a large  
14 part of its economic diversification strategy. The Wild  
15 Horse visitor center located in Kittitas County is open from  
16 April 1 to November 30 and in that time frame last year they  
17 had 18,378 visitors and of the 230 groups those visitors  
18 spend money on lodging, on travel, on food, and on retail  
19 sales. Last year visitors from Washington and 46 other  
20 states all participated in visiting the site as well as 28  
21 other countries from several different continents.

22 I then talked to Michael Davidson, the director of  
23 tourism for Walla Walla where State Line Wind Farm is  
24 located. He indicated that there has been no documented  
25 reduction in tourism activity or negative impacts reported

1 in Walla Walla due to the development of wind farms. In  
2 fact, many vineyards and wineries look out at the wind farms  
3 and boast the towers to their visitors.

4 The State of Washington participated in a workshop  
5 that I attended titled Wind and Wine where participants  
6 would see first hand how wind and wine work together to be a  
7 tourism draw for visitors to go.

8 It was mentioned last night that Skamania County  
9 is the state of Washington's number one tourism dependent  
10 county and that is correct. With such a small amount of  
11 land available for development in Skamania County, the  
12 Whistling Ridge Wind Energy Project located entirely outside  
13 the Columbia River Gorge National Scenic Area offers a way  
14 to blend renewable energy and tourism as other communities  
15 have done to make it a win-win for both business sectors.

16 So I would welcome the opportunity to work with  
17 the Skamania County Agri-Tourism Board to look at ways that  
18 we could blend those two uses together to make it a win-win  
19 tourism experience in Skamania County. So that's all I have  
20 to say.

21 JUDGE WALLIS: Thank you.

22 Wilbur Slockish. Johnny Jackson will be next and  
23 then Jacob Anderson.

24 (Wilbur Slockish sworn on oath.)

25 JUDGE WALLIS: Please state your name and your

1 address for us, please.

2 WILBUR SLOCKISH, JR.

3 having been first duly sworn on oath,

4 testified as follows:

5

6 TESTIMONY OF WILBUR SLOCKISH, JR.

7 Wilbur Slockish, S-l-o-c-k-i-s-h, Jr., P.O.

8 Box 84, Wishram, Washington 98673, and I have been hearing a  
9 lot of people representing different groups. Well, I am  
10 here to represent the animals and the life that lives in  
11 this area. There used to be a lot of wildlife here and as  
12 the vineyards come in and these people are being good  
13 neighbors feeding them, but they don't like it. I have been  
14 approached by some of these vineyard owners to kill them so  
15 that they won't eat their crops. So I think that this place  
16 where this wind farm is, is the only one that will not do  
17 that harm to the animals, to any of the land, and it would  
18 be consistent with their lifestyle because they will still  
19 be able to go through. They don't realize, people don't  
20 realize that this was their land also in conjunction with  
21 our use of that because they provided us with clothing,  
22 food, and shelter.

23 And I hope the Fish and Wildlife and the  
24 environmental department would take a look at that and find  
25 out because we get blamed for overharvesting of the

1 wildlife, but yet they can be sacrificed for economic  
2 development of these vineyards and orchards. So that part  
3 needs to be addressed because we do not waste life. We take  
4 care of it. This land is for us to take care of and I think  
5 that's what this wind farm would do because it wouldn't harm  
6 any of the life that goes through there, whether it's a deer  
7 or an elk, like we used to see when my grandmother would try  
8 to fish here at Underwood. They're not there anymore like  
9 they used to be. They always came down there, all through  
10 this area.

11 So I think this wind farm would be the only one  
12 that wouldn't harm any of the animal life, and if they truly  
13 are people for the environment then they will leave them  
14 alone. Maybe plant them a little road that they could go to  
15 eat, but they're putting up these big high fences to keep  
16 them out. So for that I support this project because it  
17 won't harm any of our animal life and the forest I've been  
18 up there and went through and it's very steep terrain. We  
19 didn't use it but we all use this land for our well being,  
20 medicinal plants. Those are things in those areas.

21 JUDGE WALLIS: Did that conclude your testimony?

22 MR. SLOCKISH: Well, just again that I do favor it  
23 for those reasons that won't harm any life and it is  
24 consistent with my people's land use in this area.

25 JUDGE WALLIS: Thank you.

1           Next, Mr. Johnny Jackson, and I will remind folks  
2 the issue that we can consider tonight is whether the  
3 proposed project is consistent with the local and regional  
4 land use requirements.

5           (Johnny Jackson sworn on oath.)

6           JUDGE WALLIS: Would you state your name and spell  
7 your last name for us and state your address.

8                                 JOHNNY JACKSON,

9                                 having been first duly sworn on oath,

10                                testified as follows:

11

12                                TESTIMONY OF JOHNNY JACKSON

13                                My name is Johnny Jackson, J-a-c-k-s-o-n, and I  
14 reside here in Underwood. I live down here by the river. I  
15 have been here for more than 40 years. I'm also the Cascade  
16 Chief. I am the chief in this area.

17                                What I'm going to say tonight is that I've looked  
18 at this project up there. I've been up there two or three  
19 times, and I think it's a good area for that wind farm.

20                                I hear a lot of testimony about what its going to  
21 do, what its going to cost, and how people, the tourism and  
22 whatnot will be seeing it and like saying it's an eyesore.  
23 You know, I've lived here all my life, and I've traveled up  
24 and down this river. I'm a fisherman. And I've been along  
25 that river down there and that's where those wind towers are

1 going to be. You can't see them from the Washington highway  
2 and just a few places along the Highway 84 you might be able  
3 to see them because you're going to see that area just a  
4 little bit of it.

5           There's nothing but brush and forest growth in  
6 there, and SDS owns it and they log it. Nobody said  
7 anything when they were logging it and taking the timber off  
8 of there. And now that they want to use it for another  
9 purpose up there to provide more electricity for our people  
10 as well as when people from California it's going to be  
11 happening in the summer that they will be hollering for more  
12 power, the Bonneville power and our dams for their  
13 refrigeration right down there, and these people are going  
14 to be hearing it. And they will ask us to kind of conserve  
15 and cut back on our use of electricity here. In that same  
16 way, the same way in the winter we kind of worry about it  
17 and the way I look at it seeing this wind farm being up  
18 there you can't stop it.

19           These Friends of the Gorge and all these people  
20 are talking about stopping it. Why aren't they stopping it  
21 up there up above Maryhill? Those wind towers are right  
22 down by the highway, and I don't hear them saying nothing  
23 about that or talking about that. What's the difference  
24 between that land and this land out here and the SDS land?

25           I don't hear the SDS people going and saying that

1 these people that own orchards or farms or whatnot over on  
2 the state of Oregon and other places that they should go and  
3 change their way of living on their lands or telling them  
4 what to do on their lands. Them people are coming over and  
5 trying to tell them what to do on their land. You know,  
6 that's stupid.

7 I'm a chief and my place is for my people. This  
8 is my territory. From here on down past Bonneville this is  
9 my area. My people has been here for years. They use this  
10 land. They can't go up through there because of that  
11 terrain. The timber and the brush only the animals are  
12 there. They have these -- we had our own passes to go up to  
13 the huckleberry fields up trout lake area and other places,  
14 and what I'm hearing is that these people seem like they're  
15 more or less targeting the certain areas and then they see  
16 that what's only good for them that they approve of, but  
17 what somebody else sees that they could see on the future  
18 that's going to help them and help their people they can't.  
19 They can't. They can't approve. They can't understand it,  
20 and they always got to criticize and throw something at it  
21 to stop it.

22 I don't see anything wrong with the use of that  
23 land for wind power because it's going to be clear out of  
24 the way. Nobody lives around there and nobody can live  
25 around there. I've been up there in that whole area. Some

1 places you look right down on one side and down the other  
2 side, and then there's canyons there.

3 JUDGE WALLIS: So your testimony then is that you  
4 believe that land use of the proposed project is consistent  
5 with requirements.

6 MR. JACKSON: Yes. I believe that the wind towers  
7 aren't going to be bothering anybody. You can't hear them.  
8 You can't hear them or see them from this side. What are  
9 these people talking about? They're on the other side of  
10 the ridge. You can go over to Goldendale and you can see  
11 all them towers. You drive right by them. I don't hear any  
12 people saying nothing about that.

13 They done that a few years ago like Enron and  
14 stuff was going put towers on them same hills up there. All  
15 right? I fought that. I went clear to Texas to fight Enron  
16 and I stopped them. But what gets me is what I see here. I  
17 see the same people going and seeing somebody owns own a  
18 piece of land and they want to develop and put something in  
19 there. They make it their business to go and stop them or  
20 interfere with what they're doing. It's none of their  
21 business. They don't own the land. And why are they doing  
22 that? Because they don't want anybody to come over to their  
23 area and tell them what to do. This is what I can't  
24 understand. This is what I'm looking at.

25 And I hope you guys look at this with a clear mind

1 and see what I'm talking about because I'm for this. Yakama  
2 Nation is going to have wind power in their area and a lot  
3 of the other reservations are talking about the same thing  
4 because it's something that's clean. There's no effects  
5 from it. There's nothing that's going to bother the people,  
6 not like the nuclear or some of these gas operating plant  
7 generators and coal. This is something that we see that's  
8 pure and clean and good for the people. And I'm behind it  
9 all the way. That's all I've got to say. Thank you.

10 JUDGE WALLIS: Thank you very much.

11 Jacob Anderson.

12 (Jacob Anderson sworn on oath.)

13 JUDGE WALLIS: Please state your name, spell your  
14 last name, and state your address, please.

15 JACOB ANDERSON,

16 having been first duly sworn on oath,

17 testified as follows:

18

19 TESTIMONY OF JACOB ANDERSON

20 Jacob Anderson, 52 Anderson Road, White Salmon,  
21 Washington 98672.

22 There's been a lot of testimony about the local  
23 land use from the Skamania County code, and you guys that  
24 have been on this board for a while know that there is no  
25 such thing as perfect zoning. I've never come across a zone

1 in any county that was perfect. You've been through this  
2 process when the question used to be are wind turbines  
3 compatible with agriculture uses. That was the question.  
4 Can we have agriculture and can we have wind turbines? The  
5 answer is yes. It's been proven. Klickitat County, Clallam  
6 County, Kittitas County. It's been proven.

7 The question is now are wind turbines compatible  
8 with designated forest lands? That's the question. So I  
9 come and I have to ask the question will SDS still be able  
10 to manage their lands, produce a profit, and grow trees and  
11 harvest trees? I'm a farmer. I'm a rancher. I'm also in  
12 the forest industry and I represent South Central Washington  
13 on the Farmland Preservation Task Force. I'm here speaking  
14 as an individual who owns property who will have a view of  
15 these turbines, and I have to respect their private property  
16 rights. But the question is are these wind turbines  
17 compatible with the land use? And SDS has gone out of their  
18 way to prove that not only can they have wind turbines and  
19 they will be able to diversify their portfolio but they can  
20 still grow and manage trees. To me that's all the evidence  
21 that's needed to prove that wind turbines and forest lands  
22 are compatible.

23 And the zoning requirements the county didn't  
24 think about it ahead of time. Nobody ever thought about it.  
25 You're going to be coming across this in other counties

1 because the Yakama Nation is about to go on and develop wind  
2 turbines on forest land, and there hasn't been a precedent  
3 set and you have to set the precedent now. The county  
4 attempted to. It's been held up and shelved so it comes to  
5 you. And I'm in favor of you setting the precedent that  
6 wind turbines are compatible with forest land designation.  
7 Thank you.

8 JUDGE WALLIS: Thank you for your testimony.

9 Mary Repar. After Ms. Repar, Tim Killian, and  
10 then Angela Morrill.

11 (Mary Repar sworn on oath.)

12 JUDGE WALLIS: Would you state your name and spell  
13 your last name and state your address for us, please.

14 MS. REPAR: Mary Repar, 6971 East Loop Road, No.  
15 2, Stevenson. Spelling of my last name is R-e-p-a-r.

16 JUDGE WALLIS: Thank you. Give us your views on  
17 whether the proposed facility is consistent with existing  
18 land use requirements.

19 MARY REPAR,

20 having been first duly sworn on oath,

21 testified as follows:

22

23 TESTIMONY OF MARY REPAR

24 The short answer is no. However, there is no  
25 short answer to that. Thank you very much for this

1 opportunity. We've heard a lot of talk about how all this  
2 came to pass and how our land use laws came to be. As  
3 you're aware the status of our current situation is I've  
4 attended all of those public meetings, almost all of them,  
5 and we ended up with a hearing examiner who stated that the  
6 county had to do an EIS in order to have good land use laws  
7 on its books. Now just because the county doesn't want to  
8 do an EIS doesn't mean that negates the fact that we went  
9 through these zoning laws in the zoning Title 21 draft  
10 document and they lost. They were instructed by the hearing  
11 examiner that an EIS was required for a zoning land use  
12 ordinance no matter what, and this was countered by the  
13 county as a nonproject zoning document and the hearing  
14 examiner told them that it didn't matter; that an EIS is  
15 still required. And the hearing examiner held since there  
16 would be many adverse effects from wind turbine development  
17 the county should do an EIS.

18           What's not to understand in here? We have a  
19 hearing examiner who said to do an EIS. The county hasn't  
20 done an EIS. I'm not an attorney, but I'm pretty sure if  
21 the judge tells me to do something then you do it. And here  
22 we had land use that we all fought hard for, the citizens.  
23 There's public action on it, and there's no like we're not  
24 using those lands at all. I think I'm wondering why the  
25 county refuses to do an EIS for this zoning document.

1           And I have questions. We do plan under the growth  
2 management act as a county with certain elements, and I  
3 don't know the answer to this. I would like this into the  
4 record. I will research it and make further comments on  
5 this. Does that have an impact on what your role is here?  
6 Because we were operating under deadlines for our zoning and  
7 for our critical areas ordinance, and the county still has  
8 not done Title 21(a), the critical areas ordinance which is  
9 land use also. So we don't have a document that has been  
10 updated either for that. This is an end around the public  
11 process. Mr. Spadaro testified that, no, this wasn't an end  
12 around. Yes, it was. The hearing examiner said you will do  
13 an EIS and the county chose not to do one because it was  
14 going to conflict with their plans for what they saw as  
15 industrialization of Skamania County. And now we have you  
16 all here to make their decision for them.

17           I don't think that that's consistent with public  
18 values. I was at the meeting on Tuesday, this last Tuesday,  
19 May 5, at ten o'clock when Resolution 2009-22, the  
20 consistency resolution, was passed, and one of the sections  
21 reads: Whereas the Board of County Commissioners on May 5,  
22 2009 saved by the Community Director's determination on  
23 regularly scheduled public meeting of this certification of  
24 land use consistency review for Whistling Ridge Wind Energy  
25 Project.

1           The public had no access to Resolution 2009-22.  
2     There were no copies available at the meeting. It was not  
3     on the county website prior to the meeting. There was no  
4     public input prior to this meeting. We got a copy of the  
5     resolution after the meeting and also at this meeting there  
6     was this 30-page document allegedly from the director of  
7     planning. Nobody had a copy of it available. We got copies  
8     after the fact. So no one has had a chance, the public, not  
9     attorneys or anything else. We didn't get hours and hours  
10    looking over a 30-page document that people got yesterday.  
11    So I'm asking this question here which I meant to. Can we  
12    still make comments on this because? This document is 30  
13    pages long, and it's very difficult to get through it in two  
14    days, and I'm hoping that you'll say we can still do it by  
15    May 18.

16           I don't think the county has done a good job on  
17    land use. I think they have been hoisted by their own  
18    petard as this has shown that this is probably an illegal  
19    use. And how can anyone believe that there is anything  
20    compatible with our environmental values in siting 426-foot  
21    cement-footed whirlwind blades of death that threatens the  
22    public health in the middle of the woods? This is a totally  
23    incompatible land use that's not been sanctioned in Skamania  
24    County's 2007 comp. plan.

25           Land uses have cumulative impacts and those

1 cumulative impacts do not follow the boundary, especially  
2 man-made boundaries. I don't know whether this is the time  
3 to ask but I will. I would like you all to do a land use  
4 cumulative impacts analysis to find out if this is a  
5 compatible land use. It is time that the industrial wind  
6 turbine project be put under intense scrutiny. You've done  
7 it for too long now. Developers have had their own way on  
8 land uses for wind turbines. Just because, you know,  
9 putting a turbine in a wheat field doesn't mean it doesn't  
10 have impacts. There are impacts. But just because you  
11 haven't done the analyses for these impacts does not mean  
12 they don't exist. So until we have the data nobody can say  
13 that land use, this land use is compatible. Thank you very  
14 much. And do we still have time to make comments further  
15 until May 18 on this issue?

16 JUDGE WALLIS: The public comment issue remains  
17 open until May 18. You may submit until then.

18 MS. REPAR: On the land use?

19 JUDGE WALLIS: Yes.

20 MS. REPAR: Okay. Thank you.

21 JUDGE WALLIS: Tim Killian.

22 (Tim Killian sworn on oath.)

23 JUDGE WALLIS: State your name, spell your last  
24 name, and state your address, please.

25 ///

1                                   TIM KILLIAN,  
2                                   having been first duly sworn on oath,  
3                                   testified as follows:  
4

5                                   TESTIMONY OF TIM KILLIAN

6                                   My name is Tim Killian. Last name is spelled  
7 K-i-l-l-i-a-n. I reside at 125 - 31st Avenue East in  
8 Seattle.

9                                   I'm speaking tonight on behalf of a group called  
10 Wind Works Northwest, an advocacy group that supports wind  
11 projects.

12                                   First, Skamania County has found and submitted to  
13 you its conclusion that the proposed project is compatible  
14 with land use policies. The county along with its citizens  
15 has welcomed state assumption of this case. I believe that  
16 this is unprecedented in the history of EFSEC and certainly  
17 it is a change from recent history.

18                                   Secondly, in considering finding the land use  
19 compatibility for power plants such as this one EFSEC  
20 traditionally looks at the local jurisdiction, the host  
21 community to present its finding, a finding that the Council  
22 has always endorsed with one exception, Kittitas County. At  
23 the risk of stating the obvious while Kittitas County  
24 resisted the state's authority all the way up to the Supreme  
25 Court, Skamania County supports state preemption; therefore,

1 it would be odd if you determine that Skamania County's  
2 findings of land use compatibility were for some reason  
3 unacceptable to you.

4 Skamania County Board of Commissioners have  
5 clearly expressed the county's land use policies and stated  
6 their priorities for their community with authority. These  
7 commissioners know appropriate land use in Skamania County  
8 and they also know what their community needs in hard times:  
9 job creation, new tax revenues, increased local purchases,  
10 and other economic stimuli.

11 The relevance of the National Scenic Area is one  
12 of the key issues for land use compatibility we will  
13 examine. The National Scenic Act is crystal clear on two  
14 central and relevant points. First, the federal designation  
15 ends at the border of the scenic area period. There are no  
16 buffers or extensions or influence or anything resembling  
17 jurisdiction created by the act beyond the border of the  
18 designated scenic area.

19 Secondly, on the Washington side of the Columbia  
20 River it is county government that establishes and  
21 determines land use policies and issues permits in concert  
22 with the act. The Gorge Commission has appellant authority  
23 over it. It's the county's job to establish and enforce its  
24 own policies which brings us with respect to land use  
25 compatibility back to the beginning.

1           The county has original jurisdiction and Skamania  
2 County has seated it to EFSEC, and in exercising its  
3 statutory authority the state has preempted processing of  
4 the Whistling Ridge Energy Project. Since the project area  
5 lies outside of the scenic area the determination of land  
6 use compatibility is entirely between EFSEC, the county, and  
7 the public.

8           Frankly, Wind Works finds the arguments that have  
9 been made for land use incompatibility of this wind power  
10 project in short narrow minded. We are going to watch with  
11 interest to see how Friends of the Gorge reconciles this  
12 aesthetic principle with the compelling challenge of  
13 reversing climate change. We are going to be curious to see  
14 how it and other opponents of the Whistling Ridge Energy  
15 Project can see through the operation at Boardman which  
16 truly plows the Gorge and attack a clean energy project that  
17 lies outside the National Scenic Area and is entirely on  
18 private land. We will be intrigued to watch as Friends of  
19 the Gorge become the enemies of clean power because make no  
20 mistake about it. That is precisely what is happening here.  
21 And we expect to be amazed as Friends of the Gorge and other  
22 self-possessed champions of their own back yards assert that  
23 minor proposed road improvements on a stretch of public and  
24 private roads within the NSA should form the basis to reject  
25 a wind farm capable of supplying electricity to 20,000 homes

1 without emitting a pound of CO2 or an ounce of the air toxin  
2 mercury.

3 Wind Works urges you to find the proposed  
4 Whistling Ridge Energy Project now before you is indeed  
5 compatible with the local land use policies as determined by  
6 Skamania County and by old fashion common sense, and I'll  
7 submit additional comments.

8 JUDGE WALLIS: Thank you, Mr. Killian.  
9 Angela Morrill, Cam Thomas, and Kevin Herman.  
10 (Angela Morrill sworn on oath.)

11 JUDGE WALLIS: State your name and spell your last  
12 name, please.

13 ANGELA MORRILL,  
14 having been first duly sworn on oath,  
15 testified as follows:

16  
17 TESTIMONY OF ANGELA MORRILL

18 Angela Morrill, M-o-r-r-i-l-l. I live at 1201  
19 Jessup Road, Mill A, Washington here in Skamania County.

20 Since everyone else has spoken up I guess I will.  
21 I am an attorney, but I'm here as a private third generation  
22 resident of Skamania County. I don't represent anyone in  
23 the room and as far as I know I'm not related to anyone.  
24 Skamania County has been through three generations so it's  
25 hard to know.

1           If you've lived in Skamania County many years ago  
2 as I did, you had an opportunity to participate in the  
3 zoning process. Our community essentially zoned themselves.  
4 If you've moved here since then you knew the various zoning  
5 designations when you moved here. You knew that residences  
6 in areas zoned forestry or large scale agricultural are the  
7 nonconforming use. The impact of the conforming use such as  
8 a wind farm on a nonconforming use such as residences should  
9 not be considered in determining whether the conforming use  
10 should be permitted.

11           I find wind farms to be far more attractive and  
12 far less intrusive or disruptive than many traditional large  
13 scale agricultural or forestry activities. I believe the  
14 proposed wind farm is on its face consistent and should be  
15 permitted. Thank you.

16           JUDGE WALLIS: Thank you very much.

17           Cam Thomas, then Kevin Herman.

18           (Cam Thomas sworn on oath.)

19           JUDGE WALLIS: State your name and spell your last  
20 name and state your address, please.

21

22                           CAM THOMAS,

23                   having been first duly sworn on oath,

24                           testified as follows:

25           ///

1 TESTIMONY OF CAM THOMAS

2 My name is Cam, C-a-m, Thomas, T-h-o-m-a-s, 52  
3 Thomas Road, Underwood, Washington and as a second  
4 generation resident of Underwood I choose to live here like  
5 many other people who are living here currently, and I  
6 appreciate the fact that Skamania County does take time and  
7 reviews as necessary whatever information is available to  
8 make zoning available to different pieces of the land that  
9 are within our county.

10 As much as we have the National Scenic Area, I'm  
11 very pleased to see that the wind farm that is proposed here  
12 today is on private property outside the scenic area and has  
13 virtually no impact on the scenic area as the boundary does  
14 stop at the border.

15 I understand that the agricultural and orchard  
16 lands that is zoned next to the forest land that is proposed  
17 for the wind turbines would actually allow the same types of  
18 turbines and/or fans to stir agriculture or orchard air  
19 outright, and it just seems a little bit inconsistent not to  
20 let the wind turbines do their thing on the forest property.  
21 Thank you.

22 JUDGE WALLIS: Thank you for your testimony.

23 Kevin Herman and then Wirt Maxey.

24 (Kevin Herman sworn on oath.)

25 ///

1 KEVIN HERMAN,  
2 having been first duly sworn on oath,  
3 testified as follows:  
4

5 TESTIMONY OF KEVIN HERMAN

6 My name is Kevin Herman, 1001 Northwest Cherry  
7 Hill Road, White Salmon, Washington 98672.

8 I realize this is about the land use  
9 compatibility, and I had a remark that I've heard here today  
10 about the permitting use for that land as far as like energy  
11 is concerned. And I was wondering does that fall into the  
12 category that we're talking about as far as land use and  
13 relating to other types of energy?

14 I would feel more comfortable if this was just a  
15 wind energy permit. Or you see what I'm saying? I guess I  
16 lack the proper terminology to really articulate what I'm  
17 trying to say, but I would feel more comfortable if this was  
18 for wind energy only, and as long as it's consistent with  
19 the law then that's what I'd want to see. I'm not sure if I  
20 was very articulate on that one.

21 The other thing that I would like to say like I  
22 said earlier I'm a student at the Columbia Gorge Community  
23 College and we did have not necessarily a workshop but that  
24 we had a couple people from the wind industry come talk  
25 about the compatibility with agriculture. Right now Texas

1 is leading the way in putting up wind farms, and so what  
2 they do is they put cows on their land and you've seen that  
3 down there in Wasco where farmers are still able to farm the  
4 land with a minimal amount of land that actually goes for  
5 the wind turbines. As much as or as little as or as much as  
6 five acres actually went for the Klondike III Wind Farm down  
7 there in Wasco County that was used up, and it was stated  
8 earlier by Jason Spadaro that it would be a maximum of ten  
9 acres.

10 So all I want to say is through this educational  
11 process I found these are compatible with forestry -- I mean  
12 not with forestry but with farming and also with raising  
13 crops on different spaces of lands. So I don't see why it  
14 wouldn't be able to work in conjunction with forestry as  
15 well. But at the same time I don't really understand why it  
16 matters to anyone else what happens to a thousand acres of  
17 forest land or give a shit to begin with. Thank you.

18 JUDGE WALLIS: Thank you very much.

19 Next, Mr. Maxey and then Jill Barker.

20 AUDIENCE MEMBER: He went to answer his phone and  
21 he left.

22 JUDGE WALLIS: Mr. Maxey is no longer here.

23 Ms. Barker, Jill Barker.

24 MS. BARKER: My comments are outside the scope of  
25 this hearing.

1 JUDGE WALLIS: Very good. Thank you.

2 We have two other persons who have signed up.

3 Sally Newell and Stephen Bronsveld.

4 (Sally Newell sworn on oath.)

5 JUDGE WALLIS: Could you state your name, spell  
6 your last name, and state your address for us.

7 SALLY NEWELL,

8 having been first duly sworn on oath,

9 testified as follows:

10

11 TESTIMONY OF SALLY NEWELL

12 My name is Sally Newell for the record. It's  
13 spelled N-e-w-e-l-l. I live at 142 Donna Road, P.O. Box 186  
14 Underwood, Washington.

15 Thank you for the opportunity to comment on the  
16 land use consistency of the proposed Whistling Ridge Energy  
17 Project. If this project was consistent with the existing  
18 underlying zoning would Skamania County have tried to change  
19 the zoning in order to accommodate this project? I don't  
20 think so. I have attached pertinent pages from the county  
21 zoning code obtained by me at the planning office from  
22 county planning staff on Monday of this week. I was assured  
23 that these pages address the zoning now in place at the  
24 location of the proposal.

25 As a former Gorge Commissioner I've had a number

1 of acquaintances in planning and zoning. As I read the  
2 allowed uses for administrative uses and conditional uses, I  
3 see nothing that allows an industrial wind farm at the  
4 location proposed. The closest thing is the one about the  
5 utilities. It must be semi-public utilities and I'm afraid  
6 that just doesn't get you there for this one.

7 That's all I have to say at this time, but I wish  
8 to be included as a party of record. Thank you so much.  
9 Thank you for coming to Underwood. We appreciate it. We  
10 are a community. We appreciate being considered.

11 JUDGE WALLIS: Thank you, Ms. Newell.

12 Stephen Bronsveld.

13 (Stephen Bronsveld sworn on oath.)

14 JUDGE WALLIS: Could you state your name and spell  
15 your last name for us.

16 MR. BRONSVELD: My name is Stephen Bronsveld.

17 That's B-r-o-n-s-v-e-l-d.

18 JUDGE WALLIS: And state your address, please.

19 MR. BRONSVELD: 1111 Scoggins Road, Underwood,  
20 Washington 98651.

21 JUDGE WALLIS: Please proceed with your comments.

22

23 STEPHEN BRONSVELD,

24 having been first duly sworn on oath,

25 testified as follows:

1 TESTIMONY OF STEPHEN BRONSVELD

2 Once again, I have to repeat thank you so much for  
3 coming to our community and having you here. We really  
4 appreciate that. I'll make my comments very brief.

5 As far as zoning, the compatibility of zoning, the  
6 land use planning in this area followed land use itself. A  
7 lot of what was planned for already existed in this area.  
8 In fact, you drove through it today. You saw it with your  
9 own two eyes. So I'm saying that you can see what is  
10 compatible with the land use by looking at what's currently  
11 there is one way to do it and you did. So I suggest that  
12 that be very determining in your thinking of that.

13 In the process of our land use planning there were  
14 large periods of time where there was virtually none and a  
15 lot of construction was built that when land use planning  
16 was developed did not comply with the rules and regulations  
17 in that land use planning and it was grandfathered in.  
18 There's a lot of places like that around here and it's just  
19 the reality. There's no sense in punishing people who had  
20 no guidelines to follow and why should they be denied the  
21 right to have a residence on their property because of the  
22 new zoning ordinance. It was decided not to do that. Part  
23 of our planning process was allowing those preexisting  
24 nonconforming uses.

25 So the reason this pertains to this because the

1 gentleman got up before and said, "Why should some minor  
2 road improvements impact the ability for this project to  
3 proceed?" And I'd like to explain. I'd like to answer that  
4 comment.

5 As you know before we discussed the applicant's  
6 stated necessary requirement for improvements to their  
7 roads, especially at the intersection of Scoggins and  
8 Kollock-Knapp Road. What may be a condition to them is that  
9 any alteration of the property line for the purposes of  
10 widening the right of way would severely impact the property  
11 owners adjacent to that who may be a condition of  
12 nonconforming use and the right to have their house may be  
13 conditional upon there being no changes to or adjustments to  
14 the property line. So that may not be a minor improvement  
15 to a road. It may severely, in fact, kick someone out of  
16 their home. That's a potential possibility according to our  
17 existing planning laws. So I just recommend that again I've  
18 stated it before to you folks and I'll state it one more  
19 time that these issues of the availability of a legal  
20 pathway for these items to get to the proposed location  
21 through the National Scenic Area need to be resolved first.  
22 Because if you cannot get the things up there, then you go  
23 to plan B to figure out if there is uses that can take  
24 place.

25 The applicant themselves in a previous county

1 commission hearing stated categorically that their project  
2 could proceed within the confines of the existing public  
3 right of way, and I'd like to see that be a control  
4 statement on their part that they would comply with that  
5 voluntarily given constraint. So that's what I have to say  
6 about that. Thank you very much.

7 JUDGE WALLIS: Thank you very much. That  
8 concludes our list for people who signed up. Let me ask if  
9 there is anyone in the audience who has not testified but  
10 who would like to testify before we conclude this hearing?  
11 Is there anyone here who would like to testify?

12 It appears that there is not. No one has  
13 indicated affirmatively that you would like to testify. So  
14 with that, I will conclude this hearing and I thank you all  
15 for your presence. This hearing is adjourned.

16 \* \* \* \* \*

17 (Whereupon, the land use hearing is adjourned at  
18 9:04 p.m.)

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I N D E X

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In re: Whistling Ridge Energy Project

A F F I D A V I T

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on May 7, 2009, in Underwood, Washington.

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Shaun Linse, CCR 2029