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

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

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

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

The Council has invited Bruce Marvin, Assistant
Attorney General and Counsel for the Environment, to be present tonight.

Mr. Marvin, are you in here?

MR. MARVIN: Yes.

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

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

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

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

Again, I want to reiterate that I'm here today.
simply to gather facts, to observe the proceedings, and
develop a position for my client and I look forward to
hearing what you folks have to say today.

JUDGE WALLIS: Thank you, Mr. Marvin.

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

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

So with that I'm going to ask the Skamania County
representative to step forward to the microphone and tell us
your name and your position and then tell us the information
that you have for us.

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

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

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

    TESTIMONY OF JIM RICHARDSON

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

    You will hear a great deal about the appeal of our proposed zoning ordinance and the ruling of the hearing officer as it pertains to that ordinance. We want to supply
a little history on that process. The county has never been
covered by a complete comprehensive plan or full
comprehensive zoning. This Board of Commissioners initiated
that process three years ago. After the comprehensive plan
was adopted we moved onto zoning. We have attached a
timeline of the zoning process. It began with a series of
day-long Board of Commissioners' workshops in March 8, 2008
and was presented as a draft to our planning commission in
May of 2008.

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

The planning commission proceeded to hold four
public hearings throughout the county on the zoning plan.
They took testimony from over 100 people and received
thousands of pages of additional testimony. The planning
commission then held four multi-hour long deliberations
between July and September of 2008. On September 30, the
planning commission presented the Board of Commissioners
with their recommended draft zoning. This included a number
of changes including specific recommendations on the large scale renewable energy pieces.

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

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

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

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

Interestingly, because of the lack of
comprehensive zoning most the of the area involved in the
present application is in fact unzoned.

Thank you very much for your time and your
efforts.

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

MR. RICHARDSON: I do.

(Jim Richardson sworn on oath.)

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

It appears there are not. Thank you very much.

MR. RICHARDSON: Thank you.

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

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

JUDGE WALLIS: That is marked as Land Use
Exhibit 1.
(Exhibit No. 1 marked for identification.)

MR. SPADARO: Mr. Chairman.

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

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

(Jason Spadaro sworn on oath.)

JUDGE WALLIS: Please proceed.

JASON SPADARO,

having been first duly sworn on oath,

testified as follows:

TESTIMONY BY JASON SPADARO

First, I want to start out by saying why, to talk a little bit about why we are here, why we have chosen to apply to EFSEC. You have heard testimony that this may have been some type of end around to the local planning process and that's not the case. As Commissioner Richardson has said in the county's, in his testimony that the county's certificate of consistency that the county had attempted to adopt an updated zoning code that would define how and where the renewable energy would be developed within the county. That was subsequently overturned by the county's hearing
examiner on the issues that you also heard about, but
there's also underlying -- presently a portion of the
property where we want to develop wind energy is on forest
resource and the remainder of it is unzoned, but there's
also a lawsuit against the county for failure to zone that
unzoned property that is currently active and still exists.
So the county had all the good intentions of establishing a
zoning and us the intentions of waiting for the county to
define the procedure that we would have to follow, asked us
at the time that their zoning efforts is bound in court,
asked us to consider them. We also asked them to consider
with us the option of coming to EFSEC.

So I want to clarify for the record why we are
here. We appreciate the fact that EFSEC provides some time
certainty in review, and we appreciate the process and we
look forward to it. I want to make one comment, a
correction actually. This will be coming to you in some
errata on the application. The application states that
there is some Residential-10 zoning in the neighboring area
to the project outside the National Scenic Area and there's
the current zoning is actually on this map. The zoning that
was put into the application was the proposed zoning changes
that was reversed by the hearing examiner. So the current
zoning is this map here, the southern south of the power
line that the south power line is stopped to look at the
substation. Everything south of that is zoned For/Ag-20, Forest-Resource/Agriculture-20, and everything north of that is currently unzoned. The lands south of the National Scenic Area boundary is zoned large scale agriculture. So now with that being established as the zoning, I would like to present some comments about consistency with the forest resource zone, the unzoned portion, and the land uses and also the neighboring land use designation of the scenic area.

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

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

JUDGE WALLIS: Thank you.

MR. SPADARO: It is the portion that's outside of the National Scenic Area that was proposed to be R-10, but it's currently Forest/Ag-20 zone. So I want to clarify that. In terms of consistency with the For/Ag-20 zone as we saw in the field tour today it is used for forestry purposes. The For\Ag-20 zone allows forestry and utilities as a conditional use. In terms of consistency with the actual practice and use of the land, I've talked about the
exhibits that are here as well as I've talked about in my informational presentation how we plan to practice forestry around the wind turbines. Actually the only converted property around each turbine that we considered to be converted away from resource use and growing some type of forestry products is a 50-foot radius around the base of each turbine. On the entire project that would equate to about ten acres, slightly less than ten acres of lands that are permanently converted for the life of the project. So we contend it's consistent with the unzoned portions and the current uses of those properties for forest resources.

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

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

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

Land use consistency as you know can be resolved
in a number of ways through the process, and ultimately if
there is any inconsistency determined ultimately to resolve
in a contested case or some other process between now and then should the Council wish to initiate that process from a resolution as you did in the PMEC decision making process, and that may be appropriate here on some of the issues that you may see before you, we're certainly prepared to do whatever we need to do to assist in that process going forward.

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

Secondly, the project is proposed by in large with the exception of the seven turbines, which everybody is talking a lot about here in the unmapped, unzoned area, and the only regulation in effect in the county code as a matter of law is whether or not -- let me back up a second. Any use is allowed unless such a use is determined by a court order or a court jurisdiction or county ordinance to be a nuisance. That is the only thing in the unmapped zone which limits the allowance of a use in the unmapped or unzoned area period, and that has been certified by the county commissioners.
Third, as to the seven turbines, approximately seven, we talked about seven, as you know micro siting could be fewer than seven. But we talked about seven turbines in the southerly portion that you saw today. Those are allowed under the county code as a conditional use; meaning a use that should be allowed and can be conditioned, and the county has recommended conditioning in signing its consistency certification. It's also provided you with an analysis. There's six, I think six criteria in the county code whereby conditional use should be approved, and they are recommending that the council find that we are in compliance with that section of the code.

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

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

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

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

The first inconvenient truth about the NSA is when Congress enacted the act and the two states adopted a compact and when the State of Washington adopted legislation and when the counties all adopted the zoning everybody well knew that very large structures, large energy structures have dominated the skyline, would dominate the skyline, and had been in discussions throughout enactment and adoption of the NSA. And I'm talking principally transmission lines, and Congress, the commission in adopting its plan, the
legislature, and the counties had the opportunity, Congress had the opportunity to say new transmission lines that are sited on the other side of that boundary, new tall structures sited on the other side of that boundary should have to comply with requirements of the NSA. Transmissions were on the table when NSA was formulated. Congress didn't say that. They said quite the contrary. They said what is beyond this line is absolutely outside the regulation of this act. No buffer, no perimeter shall ever be imposed beyond this line, and that is a matter of state law and it's a matter of federal law. So that's the Inconvenient Truth No. 1.

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

So clearly those in Congress formulating the NSA never hypothesized. They had in front of them concerns regarding tall structures that theoretically could be
considered to be inconsistent with policies of the NSA, and, number one, it was very clear that the line stops at the border; and, number two, they actually provided the opportunity to site them within the NSA under strict regulatory provisions. So I have, we have a very hard time understanding how the regulatory requirements of NSA should be imposed north of that line and into the energy facility site.

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

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

The county issues that approval. It is our very
strong view that the NSA no way changes the mission on
whether the siting Council has authority as an associated
facility for the energy project to fully approve, review --
fully review and potentially approve the roadway siting in
the NSA.

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

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

So I want to be very clear we are not coming in
here saying we want to establish a precedent that you
preempt the Gorge Act. That is not what we're saying. We
are talking a procedural issue and who is the decision
maker, and the decision maker but for EFSEC authority under
RCW Chapter 80.50 would be the county planning director.

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

JUDGE WALLIS: Very well. Thank you.

MR. McMahan: Thank you very much.

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

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

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

JUDGE WALLIS: It would be my recommendation to the Council to review and consider the testimony and the
evidence and the argument that its receiving and then follow
up with an opportunity for additional briefing.

MR. McMAHAN:  Thank you, sir.

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

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

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

CHAIR LUCE:  Jim Luce, Chair.

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

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

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

JUDGE WALLIS:  And Council staff?

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

MR. FIKSDAL:  Allen Fiksdal, EFSEC manager.

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

MR. CREWS:  Kyle Crews, Assistant Attorney
General.

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

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

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

Are you ready to proceed?

MR. KAHN: Yes.

JUDGE WALLIS: Are you an attorney representing the group?

MR. KAHN: Yes, I am. My name is Gary Kahn, and 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
you pace yourself and try not to say everything in the four minutes that has been our standard to date.

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

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

JUDGE WALLIS: Slow down a little bit.

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

With respect to consistency with the land use laws, the application contains a fatal flaw. A part of the project is to be located within the National Scenic Area.
Under scenic area rules the entire project because it is power generation is classified as an industrial use. Under the scenic area rules both the act and the ordinances implemented industrial uses are prohibited within the general management areas of the scenic area, and the land in question here that we're concerned about is the general management area. Despite this prohibition SDS proposes to construct and use more than two miles of the roads within the general management area for industrial purposes.

In both the National Scenic Area and in Skamania County generally both the construction and the use of roads must be reviewed for consistency with the Scenic Area Act and its implemented ordinances. I've attached as Exhibit A to my testimony, which I believe you all have, a letter from 2002 to the Columbia River Gorge Commission discussing the requirements to review roads within the National Scenic Area for their intended use. The Gorge Commission reached a conclusion that the use of a road is paramount to determining whether the use is allowed. In a recent federal court decision also in my material Friends of the Columbia Gorge vs. U.S. Forest discusses the same requirement. A copy of that decision is attached and holds that when the use of a road changes from one type of use to another that change in use must be reviewed for consistency with the National Scenic Area Act.
Similarly to this requirement Skamania County requires its private roads to be classified based on their primary functions. The county road system has several different classification categories ranging from private driveways to commercial development to recreation use. Proposals to change road use from one category to another such as residential to commercial triggers a review. In this case the roads proposed in the scenic area are proposed specifically for industrial purposes to haul turbines to use the roads for maintenance and construction of the project. The applicant proposes to construct new roads and to widen and improve existing public and private roads converting them to the uses. These roads will be used to haul wind energy turbine components and construction material which are industrial loads that would exceed the WSDOT legal load limit of 52.75 tons. Simply put this is an industrial activity.

Mr. McMahan, I believe that was his name, the attorney for the Applicant, talked to you about the buffers. Some of the stuff he said I would agree with and some I don't. He said flat out that the Scenic Area Act prohibits buffers. That's not a hundred percent correct. The Scenic Area Act clearly states that nothing about this impact can result in the imposition of buffers. I would agree with that part. But the point I want to leave you with here is
that the Scenic Area Act does not prohibit buffers around
the Scenic Area Act. It does not allow those buffers to be
imposed only in conjunction with the Scenic Act, but if
other grounds exist under SEPA or any of the other statutes
buffers are certainly not prohibited.

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

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

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

JUDGE WALLIS: Are there any questions from Council members?

It appears there are none.

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

MR. BAKER: Legal argument.

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

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

I have just submitted a copy for the record of a letter that we've written on consistency with the comprehensive plan for Skamania County involving issues outside of the Scenic Area. Attached to our comments is a copy of the hearing examiner's decision from the recent
appeal on the proposed energy zoning in Skamania County. That's been referenced several times over the past couple of days.

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

SDS is obviously a private company. They would not qualify. That was the reason why the county commissioners proposed the zoning change to allow this type
of use, and the hearing examiner specifically says that the comprehensive plan does not contemplate the type of energy facilities described in the proposed zoning.

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

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

And the key portion of the moratorium that is relevant here, and it's discussed in the hearing examiner's decision, is that the moratorium prohibits forest practice conversion. She says that the moratorium prohibits the acceptance and processing of SEPA checklists related to
forest practice conversions. All of us that were out on the
site this morning we could all see the land is forested, and
under the SEPA, under both SEPA and the state forest
practices rules in order to site a new industrial commercial
energy facility on a site forest practice conversions of the
timber on the property would be necessary. That is
prohibited. It has been since July 10, 2007. The
moratorium is still in effect, and I haven't heard it
mentioned by either the applicant or the county, and it's I
believe a direct reason why at this moment as long as the
moratorium is in effect this is not allowed under the county
rules. That's all I have unless there is any questions.

JUDGE WALLIS: Thank you.

Any questions from the Council members?

It appears there are not. Thank you very much.

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

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

MR. ARAMBURU: Thank you, Mr. Chairman. I'm
Richard Aramburu. My last name is spelled A-r-a-m-b-u-r-u.
My office address is 720 Third Avenue, Suite 2112, Seattle,
Washington 98104. I'm here tonight representing Save Our
Scenic Area, the SOSA group, with respect to this
application. I've handed out to members of the Council a
letter from me as well as two attachments to that letter
which I will discuss in my testimony.

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

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

Is that permissible, Mr. Wallis?

JUDGE WALLIS: Is there an objection?

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

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

JUDGE WALLIS: In terms of housekeeping, in a few
moments we'll be taking a break so people who wish to
testify will have an opportunity to sign up, and during that
break I would like to talk with counsel and identify the
documents that have been presented so far and categorize them so that we can identify them for the record very clearly and all of us know exactly what we have. In addition, I would also like to ask counsel to submit in digital format any document that is presented tonight so that it can be quickly and easily posted to the Council's website.

Mr. Aramburu, please continue.

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

I'm from Seattle. In Seattle we operate under the Growth Management Act. Skamania County does not, even though it could choose to be a growth management county. It operates instead under RCW 36.70 which for those of us who have been in land use for any time it's sort of the ancient mechanism for planning. The State of Washington adopted the WAC in 1963. 36.70 is a statute that requires a
comprehensive plan to be developed but does not
interestingly enough for land use lawyers does not require
zoning to be adopted.

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

   In about 1985, the county adopted its first set of
zoning and the zoning has been amended over time, but the
comprehensive plan there's a couple of changes that has not
been amended until 2007. In 2007, the county adopted its
new comprehensive plan. The county also attempted to adopt
new zoning for the county as a result of its comprehensive
plan, perfectly appropriate matter to be done, but to do
that one has to comply with the state law. And it has been
described previously the county did not comply with SEPA in
its application and review of the comprehensive plan, and
accordingly the hearing examiner for Skamania County had
ruled that no further progress could be made on that zoning
ordinance until an environmental impact statement could be
done. We now learn that apparently the zoning ordinance has
been permanently, to use the planning director's words,
shelved, and we don't know when it's going to be resurrected.
But that is the current status of that code.

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

The first point I wish to make, and this is for
those of you who want to follow along on page 4 of my
submission to you, is the wind turbine proposal is not
consistent with the existing comprehensive plan of the
county. In particular, Mr. Baker addressed this a bit, and
I won't repeat what he said, but the 2007 comprehensive plan
has three land use designations, none of which mention wind
turbines, none of which mention wind power, none of which
mention private utilities. They refer only to public
utilities in a set of uses within those public utilities
that are commonplace in ordinary uses: schools, parks, access, utility substations. Nothing that would approach in any manner large scale wind turbines 426 feet high over several miles of landscape in Skamania County and proposed for more than 50 of these.

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

Now, the comprehensive plan also there is a discussion here by the applicant and Mr. McMahan's testimony to you tonight that the comprehensive plan should be interpreted to allow private or semi-private facilities and utilities. That's not what the comprehensive plan says. It refers to public facilities. As you will notice from
reading my materials, semi-public facilities are a part of the county's ongoing zoning code. It's right there in the code. If the county commissioners would have intended that these semi-public facilities should be allowed under the new comprehensive plan, it had it right in front of its zoning code that definition, but that definition was not put into the comprehensive plan. No one said anything about wind turbines, electrical energy facilities, or any such thing. The comprehensive plan as adopted does not permit these activities. This was not a matter of oversight either because as the hearing examiner found in her decision on page 13 that the county had been approached repeatedly by these applicants since about 2002 to have preapplication conferences about wind turbines. And so the matter of wind turbines was before the county, before the county planning director who met with these people concerning this. So the idea that we just didn't think of wind turbines is not the case in these circumstances.

Now, under the growth -- not the growth management act. Under RCW 36.70 it is the obligation of each planning agency to prepare a comprehensive plan. Under 36.70.450 -- this is probably on page 7 and 8 of my materials, if you would like to follow along. RCW 36.70.450 says the plan agency shall use such plan as a basic source of reference and is a guide in reporting upon or recommending any
proposed project, public or private. So it is the comprehensive plan that's a guide to county decisions in a 36.70 county. As we point out on page 8 zoning codes are not required in 36.70 counties. The statute says that the planning agency may adopt zoning codes.

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

Now, I think what's particularly compelling with regard to the consistency issue and with respect to comprehensive plans and zoning is how the current comprehensive plan differs from the 1977 comprehensive plan. If you'll turn to page 92 of the bound document that I gave you, I'd like just to take a moment to highlight this point. In the 1977 comprehensive plan the Skamania County
Commissioners adopted a conservancy designation for the comprehensive plan which allowed on a conditional use basis, industrial and commercial usage. It went on to say that these uses which may be considered to be inappropriate could be established if they were approved specifically by the commissioners. So industrial, commercial use is permissible under the comprehensive plan if approved by the county commissioners.

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

Similarly, the 1977 comprehensive plan, turning back now to page 91, specifically references semi-public activities. Semi-public activities being hospitals, churches, other such activities as permissible at least in the rural zone; however, the reference to semi-public facilities and utilities is entirely illegal from the 2007
comprehensive plan, again indicating the intent of the commissioners to remove that as permissible uses within the comprehensive plan. The hearing examiner specifically found -- because this issue was actually litigated. Because when we were in the hearing with the hearing examiner the county prosecutor said, "Do not grant the appeal of SOSA and Friends because we're not really changing anything. All these activities are already permitted in our codes under our comprehensive plan so we're not having any significant impact because nothing has changed." The hearing examiner directly disagreed with that proposition, and she said -- this is very important for your review -- the 2007 comprehensive plan does not contemplate the type of energy facilities described in the planning commission recommended draft of the zoning code, does not contemplate. Wind turbines is not contemplated within the comprehensive plan. So there's a clear finding by the hearing examiner.

Now, there has been some reference here from Commissioner Richardson's comments tonight about the ongoing zoning code that had been developed by the county that was now subject to this SEPA appeal which we were successful in. He I guess is trying to convince the Council that you ought to consider what was in that code is what we were really intending to do. There are two reasons why that can't be done.
First of all, when you look at the letter that you received tonight from the planning director of Skamania County she says don't consider that code at all. So there's a conflict in what's coming from the county.

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

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

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

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

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

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

It appears that there are no questions.

MR. ARAMBURU: Thank you.

JUDGE WALLIS: Thank you for your presentation.

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

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

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

We are calling Land Use Exhibit 1 the document that was received from the county with the certification. Land use Exhibit 2 the Applicant's memorandum. Land Use Exhibit 3 is Mr. Kahn's legal memorandum. Land use
Exhibit 4 is Mr. Kahn's submission to Mr. Fiksdal, 13 pages with an attachment. Land Use Exhibit 5 is Mr. Aramburu's memorandum with two attachments. You will soon find those on the Council's website.

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

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

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

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

Mr. Crumpacker, for this proceeding we are putting witnesses under oath. I'd like to ask you to raise your
(John Crumpacker sworn on oath.)

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

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

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

JOHN CRUMPACKER,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF JOHN CRUMPACKER

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

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

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

Those facts are as follows: That tourism is the lifeblood of Skamania County and all communities throughout the Columbia River Gorge. Number two, agri-tourism is presently the driver of tourism in the Hood River Valley and Underwood is well on its way to duplicate that economic base
successfully through Skamania County. Number three, that
Underwood's historic preservation of pear orchards to
agri-tourism as well as the premier wine producing region in
the world has the most present day socioeconomic value.

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

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

JUDGE WALLIS: Please.

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

We will address the two issues: Why the proposed
"A Towers" are inconsistent with the county land use policy
and why simply moving them prevents these violations.

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

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

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

The applicant, and for that matter, the county, never took the time to study the socioeconomic value of agri-tourism and why the "A Towers" are incompatible with
such outright permitted uses. Our appendix of data submitted last night establishes complete incompatibility and is based on research conducted by the U.S. Government, the State of Washington, and the State of Oregon. This is not a wheat field surrounded by nothing. The "A Towers" would loom over one of the county's premier winemaking regions and the most valuable agri-tourism land in Skamania County.

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

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

The seven "A Towers" are the single greatest
threat to the economic welfare of the Agri-Tourism community in Underwood. Our comments yesterday addressed this issue and no more need to be said tonight.

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

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

This Council deserves better than applicant's bare claim that the project would in no way hinder the use or
development of surrounding properties.

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

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

This same conclusion must be reached by applying the county's own vision statement for our community. Skamania County is strongly committed to protecting our rural character and natural source based industry while allowing for planned future development that is balanced with the protection of critical resources and ecologically sensitive areas while preserving the community's high quality of life.

As you may have gathered the "A Towers" are very different. They're different than the rest of this project,
and they deserve to be treated differently. Thank you.

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

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

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

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

MR. CRUMPACKER: Thank you. I feel I should inform the Council that I am an active attorney here in the state of Washington, as well as in Oregon, California, and Colorado. I'm not here in that capacity, but I do feel that
I can hopefully live up to the requirements that you would have of our organization in that regard.

JUDGE WALLIS: Very well, thank you.

Next, Mr. Backus.

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

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

(Frank Backus sworn on oath.)

JUDGE WALLIS: Please proceed.

FRANK BACKUS,

having been first duly sworn on oath,

tested as follows:

TESTIMONY OF FRANK BACKUS

I believe that this wind project is compatible. The surrounding area and closest adjoining lands are either forest or agriculture and wind generation is compatible with both uses. There has been much said about the residents that are in close proximity to the project, and I would remind the panel that all those houses are in conjunction with agriculture and their existence in the Columbia River Gorge have to be tied with agriculture use, and the farming
activities near those houses many of them are more intrusive and much closer to the residents than are the windmills, and so they are conditional uses in that area too.

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

I want to touch a little more this evening on the Columbia River Gorge National Scenic Area and how that has been brought here on this issue. It never seems to amaze me whenever an area like the Columbia River Gorge or the National Scenic Area or farming and wells in this area is created how different people perceive the boundaries of those areas. To many of us it means that within those areas there's going to be restrictions put on what can be done in those areas and none of us in this group would go and propose clear cuts in the wilderness. We know it's not going to be allowed and none of us would go propose wind turbines in the National Scenic Area because we know that the applicant would not. The other group of people believe that within that boundary they're going to push for the toughest regulation they can possibly establish and then go to the boundary and draw the loop as far as they can and try to regulate everybody on the outside of that boundary.
SDS and any other landowners here in the Gorge have suffered untold losses in values of their property due to the National Scenic Area Act, and for those landowners who own property adjacent to that boundary to be asked to suffer economic harm because they're adjacent to that boundary as far as I'm concerned is beyond the table. This has been a very, very contentious issue here in this area and the boundary as I said today, the boundary is the boundary so I hope you give that due consideration. Thank you very much.

JUDGE WALLIS: Thank you, Mr. Backus.

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

(Rich Potter sworn on oath.)

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

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

JUDGE WALLIS: Please proceed.

RICH POTTER,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF RICH POTTER

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

JUDGE WALLIS: Thank you very much.

MR. POTTER: Thank you.

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

(Peggy Bryan sworn on oath.)

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

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

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

MS. BRYAN: I'm short.

PEGGY BRYAN, having been first duly sworn on oath, testified as follows:

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TESTIMONY OF PEGGY BRYAN

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

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

I then talked to Michael Davidson, the director of tourism for Walla Walla where State Line Wind Farm is located. He indicated that there has been no documented reduction in tourism activity or negative impacts reported
in Walla Walla due to the development of wind farms. In fact, many vineyards and wineries look out at the wind farms and boast the towers to their visitors.

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

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

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

JUDGE WALLIS: Thank you.

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

(Wilbur Slockish sworn on oath.)

JUDGE WALLIS: Please state your name and your
address for us, please.

        WILBUR SLOCKISH, JR.

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF WILBUR SLOCKISH, JR.

Wilbur Slockish, S-l-o-c-k-i-s-h, Jr., P.O. Box 84, Wishram, Washington 98673, and I have been hearing a lot of people representing different groups. Well, I am here to represent the animals and the life that lives in this area. There used to be a lot of wildlife here and as the vineyards come in and these people are being good neighbors feeding them, but they don't like it. I have been approached by some of these vineyard owners to kill them so that they won't eat their crops. So I think that this place where this wind farm is, is the only one that will not do that harm to the animals, to any of the land, and it would be consistent with their lifestyle because they will still be able to go through. They don't realize, people don't realize that this was their land also in conjunction with our use of that because they provided us with clothing, food, and shelter.

And I hope the Fish and Wildlife and the environmental department would take a look at that and find out because we get blamed for overharvesting of the
wildlife, but yet they can be sacrificed for economic development of these vineyards and orchards. So that part needs to be addressed because we do not waste life. We take care of it. This land is for us to take care of and I think that's what this wind farm would do because it wouldn't harm any of the life that goes through there, whether it's a dear or an elk, like we used to see when my grandmother would try to fish here at Underwood. They're not there anymore like they used to be. They always came down there, all through this area.

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

JUDGE WALLIS: Did that conclude your testimony?

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

JUDGE WALLIS: Thank you.
Next, Mr. Johnny Jackson, and I will remind folks the issue that we can consider tonight is whether the proposed project is consistent with the local and regional land use requirements.

(Johnny Jackson sworn on oath.)

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

JOHNNY JACKSON,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF JOHNNY JACKSON

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

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

I hear a lot of testimony about what its going to do, what its going to cost, and how people, the tourism and whatnot will be seeing it and like saying it's an eyesore.

You know, I've lived here all my life, and I've traveled up and down this river. I'm a fisherman. And I've been along that river down there and that's where those wind towers are...
going to be. You can't see them from the Washington highway and just a few places along the Highway 84 you might be able to see them because you're going to see that area just a little bit of it.

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

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

I don't hear the SDS people going and saying that
these people that own orchards or farms or whatnot over on
the state of Oregon and other places that they should go and
change their way of living on their lands or telling them
what to do on their lands. Them people are coming over and
trying to tell them what to do on their land. You know,
that's stupid.

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

I don't see anything wrong with the use of that
land for wind power because it's going to be clear out of
the way. Nobody lives around there and nobody can live
around there. I've been up there in that whole area. Some
places you look right down on one side and down the other
side, and then there's canyons there.

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

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

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

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

JUDGE WALLIS: Thank you very much.

Jacob Anderson.

(Jacob Anderson sworn on oath.)

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

JACOB ANDERSON,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF JACOB ANDERSON

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

There's been a lot of testimony about the local
land use from the Skamania County code, and you guys that
have been on this board for a while know that there is no
such thing as perfect zoning. I've never come across a zone
in any county that was perfect. You've been through this process when the question used to be are wind turbines compatible with agriculture uses. That was the question. Can we have agriculture and can we have wind turbines? The answer is yes. It's been proven. Klickitat County, Clallam County, Kittitas County. It's been proven.

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

And the zoning requirements the county didn't think about it ahead of time. Nobody ever thought about it. You're going to be coming across this in other counties.
because the Yakama Nation is about to go on and develop wind
turbines on forest land, and there hasn't been a precedent
set and you have to set the precedent now. The county
attempted to. It's been held up and shelved so it comes to
you. And I'm in favor of you setting the precedent that
wind turbines are compatible with forest land designation.
Thank you.

JUDGE WALLIS: Thank you for your testimony.

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

(Mary Repar sworn on oath.)

JUDGE WALLIS: Would you state your name and spell
your last name and state your address for us, please.
MS. REPAR: Mary Repar, 6971 East Loop Road, No.
2, Stevenson. Spelling of my last name is R-e-p-a-r.

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

MARY REPAR,

having been first duly sworn on oath,
testified as follows:

TESTIMONY OF MARY REPAR

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

What's not to understand in here? We have a hearing examiner who said to do an EIS. The county hasn't done an EIS. I'm not an attorney, but I'm pretty sure if the judge tells me to do something then you do it. And here we had land use that we all fought hard for, the citizens. There's public action on it, and there's no like we're not using those lands at all. I think I'm wondering why the county refuses to do an EIS for this zoning document.
And I have questions. We do plan under the growth management act as a county with certain elements, and I don't know the answer to this. I would like this into the record. I will research it and make further comments on this. Does that have an impact on what your role is here? Because we were operating under deadlines for our zoning and for our critical areas ordinance, and the county still has not done Title 21(a), the critical areas ordinance which is land use also. So we don't have a document that has been updated either for that. This is an end around the public process. Mr. Spadaro testified that, no, this wasn't an end around. Yes, it was. The hearing examiner said you will do an EIS and the county chose not to do one because it was going to conflict with their plans for what they saw as industrialization of Skamania County. And now we have you all here to make their decision for them.

I don't think that that's consistent with public values. I was at the meeting on Tuesday, this last Tuesday, May 5, at ten o'clock when Resolution 2009-22, the consistency resolution, was passed, and one of the sections reads: Whereas the Board of County Commissioners on May 5, 2009 saved by the Community Director's determination on regularly scheduled public meeting of this certification of land use consistency review for Whistling Ridge Wind Energy Project.
The public had no access to Resolution 2009-22. There were no copies available at the meeting. It was not on the county website prior to the meeting. There was no public input prior to this meeting. We got a copy of the resolution after the meeting and also at this meeting there was this 30-page document allegedly from the director of planning. Nobody had a copy of it available. We got copies after the fact. So no one has had a chance, the public, not attorneys or anything else. We didn't get hours and hours looking over a 30-page document that people got yesterday. So I'm asking this question here which I meant to. Can we still make comments on this because? This document is 30 pages long, and it's very difficult to get through it in two days, and I'm hoping that you'll say we can still do it by May 18.

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

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

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

MS. REPAR: On the land use?

JUDGE WALLIS: Yes.

MS. REPAR: Okay. Thank you.

JUDGE WALLIS: Tim Killian.

(Tim Killian sworn on oath.)

JUDGE WALLIS: State your name, spell your last name, and state your address, please.
TIM KILLIAN,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF TIM KILLIAN

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

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

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

Secondly, in considering finding the land use compatibility for power plants such as this one EFSEC traditionally looks at the local jurisdiction, the host community to present its finding, a finding that the Council has always endorsed with one exception, Kittitas County. At the risk of stating the obvious while Kittitas County resisted the state's authority all the way up to the Supreme Court, Skamania County supports state preemption; therefore,
it would be odd if you determine that Skamania County's findings of land use compatibility were for some reason unacceptable to you.

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

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

Secondly, on the Washington side of the Columbia River it is county government that establishes and determines land use policies and issues permits in concert with the act. The Gorge Commission has appellant authority over it. It's the county's job to establish and enforce its own policies which brings us with respect to land use compatibility back to the beginning.
The county has original jurisdiction and Skamania County has seated it to EFSEC, and in exercising its statutory authority the state has preempted processing of the Whistling Ridge Energy Project. Since the project area lies outside of the scenic area the determination of land use compatibility is entirely between EFSEC, the county, and the public.

Frankly, Wind Works finds the arguments that have been made for land use incompatibility of this wind power project in short narrow minded. We are going to watch with interest to see how Friends of the Gorge reconciles this aesthetic principle with the compelling challenge of reversing climate change. We are going to be curious to see how it and other opponents of the Whistling Ridge Energy Project can see through the operation at Boardman which truly plows the Gorge and attack a clean energy project that lies outside the National Scenic Area and is entirely on private land. We will be intrigued to watch as Friends of the Gorge become the enemies of clean power because make no mistake about it. That is precisely what is happening here. And we expect to be amazed as Friends of the Gorge and other self-possessed champions of their own back yards assert that minor proposed road improvements on a stretch of public and private roads within the NSA should form the basis to reject a wind farm capable of supplying electricity to 20,000 homes
without emitting a pound of CO2 or an ounce of the air toxin mercury.

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

JUDGE WALLIS: Thank you, Mr. Killian.
Angela Morrill, Cam Thomas, and Kevin Herman. (Angela Morrill sworn on oath.)
JUDGE WALLIS: State your name and spell your last name, please.

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

TESTIMONY OF ANGELA MORRILL
Angela Morrill, M-o-r-r-i-l-l. I live at 1201 Jessup Road, Mill A, Washington here in Skamania County.
Since everyone else has spoken up I guess I will. I am an attorney, but I'm here as a private third generation resident of Skamania County. I don't represent anyone in the room and as far as I know I'm not related to anyone. Skamania County has been through three generations so it's hard to know.
If you've lived in Skamania County many years ago as I did, you had an opportunity to participate in the zoning process. Our community essentially zoned themselves. If you've moved here since then you knew the various zoning designations when you moved here. You knew that residences in areas zoned forestry or large scale agricultural are the nonconforming use. The impact of the conforming use such as a wind farm on a nonconforming use such as residences should not be considered in determining whether the conforming use should be permitted.

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

JUDGE WALLIS: Thank you very much.

Cam Thomas, then Kevin Herman.

(Cam Thomas sworn on oath.)

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

CAM THOMAS,

having been first duly sworn on oath,

testified as follows:

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TESTIMONY OF CAM THOMAS

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

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

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

Thank you.

JUDGE WALLIS: Thank you for your testimony.

Kevin Herman and then Wirt Maxey.

(Kevin Herman sworn on oath.)
KEVIN HERMAN,

having been first duly sworn on oath,

testified as follows:

TESTIMONY OF KEVIN HERMAN

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

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

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

The other thing that I would like to say like I said earlier I'm a student at the Columbia Gorge Community College and we did have not necessarily a workshop but that we had a couple people from the wind industry come talk about the compatibility with agriculture. Right now Texas
is leading the way in putting up wind farms, and so what they do is they put cows on their land and you've seen that down there in Wasco where farmers are still able to farm the land with a minimal amount of land that actually goes for the wind turbines. As much as or as little as or as much as five acres actually went for the Klondike III Wind Farm down there in Wasco County that was used up, and it was stated earlier by Jason Spadaro that it would be a maximum of ten acres.

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

JUDGE WALLIS: Thank you very much.

Next, Mr. Maxey and then Jill Barker.

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

JUDGE WALLIS: Mr. Maxey is no longer here.

Ms. Barker, Jill Barker.

MS. BARKER: My comments are outside the scope of this hearing.
JUDGE WALLIS: Very good. Thank you.
We have two other persons who have signed up.
Sally Newell and Stephen Bronsveld.
(Sally Newell sworn on oath.)
JUDGE WALLIS: Could you state your name, spell your last name, and state your address for us.
SALLY NEWELL,
having been first duly sworn on oath,
testified as follows:

TESTIMONY OF SALLY NEWELL
My name is Sally Newell for the record. It's spelled N-e-w-e-l-l. I live at 142 Donna Road, P.O. Box 186 Underwood, Washington.
Thank you for the opportunity to comment on the land use consistency of the proposed Whistling Ridge Energy Project. If this project was consistent with the existing underlying zoning would Skamania County have tried to change the zoning in order to accommodate this project? I don't think so. I have attached pertinent pages from the county zoning code obtained by me at the planning office from county planning staff on Monday of this week. I was assured that these pages address the zoning now in place at the location of the proposal.
As a former Gorge Commissioner I've had a number
of acquaintances in planning and zoning. As I read the
allowed uses for administrative uses and conditional uses, I
see nothing that allows an industrial wind farm at the
location proposed. The closest thing is the one about the
utilities. It must be semi-public utilities and I'm afraid
that just doesn't get you there for this one.

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

JUDGE WALLIS: Thank you, Ms. Newell.

Stephen Bronsveld.

(Stephen Bronsveld sworn on oath.)

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

MR. BRONSVELD: My name is Stephen Bronsveld.

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

JUDGE WALLIS: And state your address, please.

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

JUDGE WALLIS: Please proceed with your comments.

STEPHEN BRONSVELD,

having been first duly sworn on oath,

tested as follows:
TESTIMONY OF STEPHEN BRONSVELD

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

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

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

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

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

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

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

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

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(Whereupon, the land use hearing is adjourned at 9:04 p.m.)
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<td>TIMOTHY McMAHAN</td>
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<td>Mr. Kahn's Legal Memorandum</td>
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<td>Mr. Kahn's submission to Mr. Fiksdal</td>
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<td>5</td>
<td>Mr. Aramburu's memorandum with attachment</td>
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In re: Whistling Ridge Energy Project

AFFIDAVIT

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.

______________________________
Shaun Linse, CCR 2029