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Energy Facility Site Evaluation Council  
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RE: Application No. 2009-01 of the WHISTLING RIDGE ENERGY PROJECT LLC for  
the WHISTLING RIDGE ENERGY PROJECT: Transfer of SCA

Dear Council Members:

This office represents Save Our Scenic Area and Friends of the Columbia Gorge (in this comment we will simply make reference to "SOSA"), interested parties and active participants in proceedings before this Council concerning the Whistling Ridge Energy Project from 2009 through 2012. We adopt by reference the two letters earlier submitted by Friends regarding the SCA Transfer request and the Extension request. SOSA's interest in the project continues to this date.

SOSA opposes the request to transfer the SCA for the reasons stated below. In summary, the supposed transfer without submission to, or approval of, the Council is wholly inconsistent with long-standing Council rules. The Council should deny the request to transfer the SCA and determined that the SCA has been abandoned by the actions of the original permit holder.

## 1. BACKGROUND FACTS.

On March 10, 2009, WRE filed with this Council an application to construct and operate a wind energy project with up to 50 turbines with a "maximum installed nameplate capacity of up to 75 MW."<sup>1</sup> The turbines would each have minimum nameplate

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<sup>1</sup>Council Order 869 (Order and Report to the Governor Recommend Approval of Site Certification in Part, on Condition), page 1. Project Application at page 2.3-1.

capacity of 1.5 MW, but could be as large as 2.5 MW.<sup>2</sup> The Applicant stated that the turbines would be installed “in designated corridors on or near ridge tops on the north rim of the Columbia River Gorge....”<sup>3</sup> Each corridor would be 200 feet wide, and would contain a certain number of turbines, but “the specific turbine type and manufacturer ha[d] not been selected” in the 2009 application.<sup>4</sup> The more precise locations of the turbines were to be set at a later “micro-siting stage.” The Application states that:

Each turbine would be up to approximately 426 feet tall (262-foot hub height and 164-foot radius blades, measured from the ground to the turbine blade tip), and would be mounted on a concrete foundation. Wind turbines would be grouped in “strings,” each spaced approximately 350 to 800 feet from the next (approximately 1.5 to 2.5 times the diameter of the turbine rotor).

Based on this information, draft and final environmental impact statements were prepared for the proposal.<sup>5</sup> The proposed corridors were shown on Figure 2-1 in the FEIS and the project description above was consistent with the application.<sup>6</sup>

The adjudication hearing before the full Council began on January 3, 2011, in Skamania County. As prefiled direct and rebuttal testimony had been submitted, the hearing was principally cross examination based on written testimony. The first witness to be cross examined was Jason Spadaro, the project manager, SDS president and WRE president. During cross examination by counsel for SOSA, Mr. Spadaro interrupted to “make a comment . . . regarding the number of turbines and location of those turbines.”<sup>7</sup> He went on to essentially *change the application* by saying: “I would stipulate at this point before this Council that 2-megawatt machines or larger would be used for this project.”<sup>8</sup> Mr. Spadaro went on to say that:

By going with 2-megawatt or larger machines we now have the option of going with fewer turbines with a maximum of 38 instead of 50. The tradeoffs with fewer larger turbines they have a larger wake effect. There are a couple of rows that

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<sup>2</sup>Project Application at page 2.3-1.

<sup>3</sup>*Id.* at 2.

<sup>4</sup>Project application, page 2.3-3

<sup>5</sup>The FEIS was issued in August 2011.

<sup>6</sup>FEIS, Section 2.1.3.1, page 2-5. The FEIS may be found on the Council's website.

<sup>7</sup>Tr. 74:24-25

<sup>8</sup>Tr.. 73:20-22.

are shown here, the E-row and the F-row, are only viable if there are smaller turbines being used. Those two at 10 2-megawatt machines, those two rows can be dropped out, and then the 38 turbines would be scattered among the remaining corridors that we're seeking permitting for.<sup>9</sup>

Thus the Applicant stated that the proposal to install 38 of the larger 2.0 MW turbines included the removal of the two of the smaller turbine strings, "E" and "F," which were designated for five total turbines. Other than his statement that the remaining 38 large turbines would be "scattered among the remaining corridors," the number of turbines in each corridor was not specified. But Mr. Spadaro stated that, with the stipulation regarding the minimum turbine size, keeping the remaining strings was critical to the success of the project:

With regard to the A-string which we will hear a lot about in the next week, week and a half, the main issue here is obviously scenic resources. With regard to the A-string, that reduces the number from seven 1.5 machines to five machines by going to a 2-megawatt or larger machines. Any further downsizing though of the project we still need in order to get 38 machines, we still need to have the same start point and the same end point along these ridges and along the turbine corridors. Dropping or starting the start point farther north or pushing the end point farther south reduces the total size of the project, and we cannot accept that; otherwise, it kills the project. That's the end of my remarks.<sup>10</sup>

(Emphasis supplied). As indicated, the stipulation was actually more of an ultimatum: if any turbine corridors are removed, "it kills the project."<sup>11</sup>

The project, as modified at the beginning of the hearing, was to be located on commercial forest land owned by S.D.S. Co., LLC and Broughton Lumber Company. Ownership of the project was described in the application as: "Whistling Ridge Energy LLC, a special purpose corporation operating in the State of Washington, is developing and would own the project." WRE was "wholly owned by S.D.S. Co., LLC," also owner of much of the project site itself.

Following extended hearings and proceedings in which SOSA/Friends were active participants, on October 6, 2011, the Council issued Order 868, the "Adjudicative Order Resolving Contested Issues" which was signed by the seven Council members,

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<sup>9</sup>Tr.. 74:4-12.

<sup>10</sup>*Id.* at lines 13-25.

<sup>11</sup> The applicant stipulated to retaining the size limitation for the minimum 2.5 MW turbines, i.e. "The maximum height we are seeking permitting for is 426 feet . . ." Tr. 78:1-12.

with a “Concurring Opinion of Chairman James Luce.” At page 22, the Council concluded as follows:

We adopt the suggestion of Counsel for the Environment, supported by SOSA to eliminate the portion of the A corridor containing Turbines A-1 through A-7 from the approved siting area. In light of our site view and our analysis of tower visibility based on Fig. 4.2-5 and simulations, we also find the entire C corridor, tower locations C-1 through C-8, to be impermissibly intrusive into the scenic vista unique to the Columbia Gorge and the heritage associated with it and it is also denied. Therefore, we find this portion of the site to be unsuitable for the proposed project.

Order 869, “Order and Report to Governor Recommending Approval of Site Certification in Part, on Condition,” adopted the reasoning in Order 868 (emphasis supplied).<sup>12</sup> This Council conditioned its approval on the project by removing the two “turbine strings,” A1-A7 and C1-C8, with a total of 15 turbines.<sup>13</sup>

The applicant WRE filed a vigorous objection to the decision to remove the A1-A7 and C1-C8 turbine strings. The Council declined to modify its decision and rejected WRE’s reconsideration request. Governor Gregoire carefully considered WRE’s objections and concerns that the project would not be viable as conditioned, but affirmed this Council recommendation. WRE accepted the actions of EFSEC and the Governor by signing the SCA.<sup>14</sup> Significant to this proceeding, WRE did not file judicial challenges to the decision of the Council and the Governor.

Instead of proceeding with the necessary studies and detailed site planning, we now learn that in December, 2020, S.D.S. CO., LLC, the owner of both the SCA and the lands on which the project would reside, decided to liquidate its assets, publicly stating its intentions.<sup>15</sup> Nine months later, on September 30, 2021, S.D.S. CO., LLC announced that Twin Creeks Timber, LLC (TCT), had agreed to buy the S.D.S. Co.,

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<sup>12</sup>Indeed, in Order 869, the Council required these “unsuitable lands” be legally described: Applicant shall no later than the time for filing petitions for reconsideration file legal description of the affected land for inclusion in the Site Certification Agreement as territory prohibited from use for turbine towers or other Project structures.  
Page 13, Footnote 23. However, no such descriptions have ever been filed.

<sup>13</sup>The location of the several strings is shown in Attachment 3, Figure 2-1 from the FEIS.

<sup>14</sup>The signed SCA is on the Council Whistling Ridge website.

<sup>15</sup>See Attachment 4, article from the December 30, 2020 edition of the Goldendale Sentinel.

LLC assets.<sup>16</sup> Apparently, TCT and S.D.S. Co., LLC had entered into a “Membership Interest Purchase Agreement” dated September 21, 2021, “pursuant to which SDS Timber has agreed to transfer and convey to Assignee [which is referenced in other documents as TCT] the SDS assets” which included all the real property on which the project would be built. *Id.* This “transfer” was in fact a *liquidation* of its assets; while SDS remains as a corporate entity, we believe it is only a “shell” company with substantially no assets; it is incapable of funding or moving forward with the Whistling Ridge project.

When SDS decided to liquidate its assets (including the SCA), no effort was made by S.D.S. CO., LLC or by TCT to inform this Council nor to notify parties of record of the transfer of the sale.

Then on March 2, 2022, this Council received a draft “Request to Extend Term of Site Certificate Agreement Pursuant to WAC 468-68-080” (the “draft Extension Request”).<sup>17</sup>

Two weeks later, on March 16, 2022, Green Diamond Management Company (GDM) stated it was the “authorized representative for Twin Creeks Timber, LLC (TCT), the new owner of Whistling Ridge Energy LLC” (hereinafter, TCT)<sup>18</sup> (emphasis supplied). The letter went on to say that “TCT acquired Whistling Ridge as part of a larger acquisition in November of 2021.” Green Diamond acknowledged the filing of the extension request, but indicated it was “the first of two filings” stating “the second will be a request to amend the SCA to account for the change in ownership of Whistling Ridge from the prior owner to TCT.” As to timing, the letter said the request for transfer would be filed “in the next several weeks.” Green Diamond further asked that “a single process” before the Council deal with both the ownership change and the previously filed SCA extension request. Its letter stated that it “anticipated filing the request for transfer in the next several weeks, . . .” The letter also asked that this Council “take no action on either request until we are prepared to move forward on both.”

The actual transfer request was not filed until September 13, 2023, some eighteen months later. As anticipated in its March 16, 2022 letter, the transfer request asked the Council to retroactively approve a transfer of the SCA which actually took place in September, 2021. See Attachment 4.

In its 2023 extension request, WRE claims that delays in proceeding with the

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<sup>16</sup>See press release from SDS at Attachment 5.

<sup>17</sup>The Transfer Request was not sent to parties of record in the Whistling Ridge adjudication.

<sup>18</sup> See Attachment 2.

project were due to litigation that only ended in 2018 when appeals were exhausted. See September 23, 2023 Extension Request at page 4. The Request goes on to say:

no project facing fierce, multi-year litigation can secure financing or otherwise proceed if pending appeals jeopardize construction. No prudent developer proceeds with construction and operation of an energy facility if there is any risk of an appeal outcome that would require the dismantling of an operating facility.

But even WRE admits that the real reason the project did not move forward during the 2018-2021 time period was that the SDS Board was “*undergoing protracted internal conflict.*” September 23, 2023 Extension Request at 2. As will be discussed, it is likely conflict might have developed over the fact that the project was “likely not economically feasible” as claimed by its lawyer, Tim McMahan, in its Reconsideration Petition filed on October 27, 2011. See Attachment 9.

The first notification to this Council of the sale was not a request to approve the transfer of the SCA, but a letter sent to Sonia Bumpus from Green Diamond Management on March 16, 2022. That letter informed the Council that TCT was “the new owner of Whistling Ridge Energy, LLC” and “had acquired Whistling Ridge as part of a larger acquisition in November of 2021.” No information was provided regarding the nature of the sale, the financial or other terms, or whether TCT agreed to assume the existing obligations of SDS.

### **3. AUTHORITY.**

As will be summarized below, the request to extend the SCA should be denied for the following reasons.

#### **3.1 *The SCA has expired by its terms and otherwise been abandoned by the Certificate Holder.***

WAC 463-68-030, “Term for start of construction” states:

Subject to conditions in the site certification agreement and this chapter, construction may start any time within ten years of the effective date of the site certification agreement.

The SCA for this project is explicit on the subject on page 1:

Construction shall begin only upon prior Council authorization and approval of such certifications. If the Certificate Holder does not begin construction of the Project within ten (10) years of execution of the SCA, all rights under this SCA will cease.

Indeed, the SCA has a second deadline, also on page 1:

This Site Certification Agreement authorizes the Certificate Holder to construct the Project such that Substantial Completion is achieved no later than ten (10) years from the date that all final state and federal permits necessary to construct and operate the Project are obtained and associated appeals have been exhausted.

There is no demonstration that any progress on construction or permitting of project elements has taken place while the SCA and project property were owned by SDS.

In fact, the holder of the SCA, SDS, has conveyed away the rights to the SCA, together with the land on which it would be built, to a new owner, without seeking the approval required by Council rules and by the SCA itself. As such SDS/WRE deliberately abandoned its SCA, likely because they fully understood the project is not viable. Further, as noted above, SDS has now liquidated its assets and is not in a financial, technical or managerial position to move forward with the project approved in the SCA, or indeed any wind turbine project at all. As noted above, there is no intent shown to pursue the approved project, by either the original SCA holder (SDS) or the transfer applicant (TCT).<sup>19</sup>

Under these circumstances, it is appropriate for the Council to terminate the SCA effective the date the SCA was transferred by SDS to TCT, in September, 2021. TCT, the transfer applicant, says it is reviewing “financial and environmental feasibility,” stating its unwillingness to move forward with the project as approved by the Governor on March 5, 2012. If the new owner wants to change the project to its own liking, it may file a new application. Indeed, one of the “actions” to be completed by the consultants for TCT is:

Develop schedule to complete all study work needed for Site Certificate Amendment Application.”

2023 Extension Application at page 7 (Attachment A). TCT has no interest in proceeding under the 2012 SCA.

Moreover, the September 13, 2023 Transfer Request, describing its “managerial, and technical capability to comply with the terms and conditions of the SCA” provides no commitments of any kind. It says:

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<sup>19</sup>Moreover, even without the voluntary abandonment, the SCA has expired, though the claimed successor to SDS claims that the “effective date” of the site certificate is when the representative “of the applicant” signed the SCA (November 18, 2013) rather than when it was signed by the Governor (March 5, 2012). Friends and SOSA address this issue in a separate filing with the Council.

Applicant is developing a memorandum of understanding with Steelhead to provide development services and potentially take a leading or controlling interest in the Project and its further development. As noted above, Applicant has contracted with Navitas Development and Steelhead after approval of this Transfer Application and the Extension Request.

See page 3 (Emphasis supplied). Now more than two and a half years after it acquired the SCA (and the project lands), and two years since TCT said a transfer request would be forthcoming “in the next several weeks,” there are still no firm understandings to proceed with the SCA.

With the advice of experienced legal council, WRE and TCT agreed to convey the SCA and all the land necessary to locate any wind turbines without notice to, or approval of EFSEC. The Council should determine that the 2012 SCA has been abandoned by the holder of the SCA and that it is void.

**3.2 *Twin Creeks Timber lacks standing to apply for an extension request or transfer the SCA, especially one that requests a “single process” for both actions.***

As described above, the SCA expired by its terms and has been abandoned by the permittee. Even if that were not true, the new owner cannot seek either a transfer or extension of the SCA approved in March, 2012.

Insultingly, the Council is asked for retroactive approval of an already completed transfer when the applicant had refused to provide notice to the Council or parties of record of the intended ownership transfer. The Council should not consider the request to extend the SCA (by three years) by an entity that lacks standing to make such a request. The SCA, signed by SDS and the Governor, expressly provides under Section K, “Amendment of Site Certification Agreement” that:

2. No change in ownership or control of the Project shall be effective without prior Council approval to EFSEC rules and regulations.<sup>20</sup>

(Emphasis supplied.) This Council’s rules for “Transfer of site certification agreement” are found at WAC 463-66-100 and provide that:

No site certification agreement, any portion of a site certification agreement, nor any legal or equitable interest in such an agreement issued under this chapter shall be transferred, assigned, or in any manner disposed of (including

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<sup>20</sup>Site Certification Agreement at page 16.



abandonment), either voluntarily or involuntarily, directly or indirectly, through transfer of control of the certification agreement or the site certification agreement owner or project sponsor without express council approval of such action.

(Emphasis supplied.)

A “formal application” to transfer the SCA must be filed under WAC 463-66-100(1) and must include:

information about the new owner required by WAC 463-60-015 and 463-60-075 that demonstrate the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the original site certification agreement including council approved plans for termination of the plant and site restoration.

Of course, the proposed new owner, TCT, carefully states that it has not agreed to the terms of the SCA, and is only prepared to “review the financial and environmental feasibility of constructing the facility prior to commencing any studies.”<sup>21</sup> It says not a word about its “capabilities” to meet the terms of the SCA.

WAC 463-60-015 requires “an appropriate description of the applicant’s organization and affiliation” and WAC 463-60-075 requires “full disclosure by applicants” including “all information known to the applicant which has a bearing on site certification.” No information is provided concerning TCT and its organizational, managerial or financial ability, or willingness, to complete the project approved. WAC 463-66-100(3) requires “any person who submits an application to acquire a site certification agreement under provisions of this section to file a written consent from the current certification holder . . . attesting to the person’s right . . . to possession of the energy facility involved.” No consent has been filed by SDS.

Procedurally, under its transfer procedures, WAC 463-66-100(4), the Council or applicant must “mail a notice of the pending application for transfer of the site certification agreement to all persons on its mailing list . . . .” After this mailing, “the council shall hold an informational hearing on the application.” WAC 463-26-025 describes procedures for a public information meeting, including at Subsection (1) the obligation of the applicant to make a presentation and at Subsection (2) that the “general public shall be afforded an opportunity to present written or oral comments relating to the proposed project.” Subsection (3) provides: “The informational meeting shall be held in the general proximity of the proposed project as soon as practicable

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<sup>21</sup>See Extension Request dated September 13, 2023.

within sixty days after receipt of an application for site certification.”<sup>22</sup>

Following the informational hearing, “the council shall issue a formal order either approving or denying the application for transfer of the site certification agreement.” WAC 463-66-100(5).

As described, SDS and TCT have deliberately chosen to avoid these clear requirements of the SCA, and this Council’s rules, by the unapproved transfer of both the SCA and the property to a new owner two and a half years ago. The record indicates that S.D.S. Co., LLC was actively marketing its properties, including the SCA, since December, 2020. The record further indicates that the agreement to acquire these assets was reached in September, 2021, with a closing in the fourth quarter of 2021. See Attachment 4. There was sufficient time between the agreement to convey the permit (and necessary real estate) and the formal closing to prepare an application for transfer of the SCA under the Council’s rules, particularly WAC 463-66-100. Moreover, there is no indication that closing of the transaction, including transfer of the SCA, could not have been made contingent on approval of the transfer by this Council. The transfer applicant, TCT, has not provided copies of the agreement to transfer the property (and the SCA) from SDS to TCT. “Full disclosure” has not been provided.

Moreover, it is commonplace in sales of valuable property, including those that require regulatory approval for the asset transfer, to make the transfer contingent on such regulatory approval. No reason is offered as to why this standard commercial practice was not followed for this transaction.

As counsel for S.D.S. Co., LLC and/or TCT is familiar with Council rules, and with the Whistling Ridge application in particular,<sup>23</sup> the improper transfer cannot be excused by ignorance of the long standing rules for Council approval of the transaction.

In clear violation of these rules, an application has now been filed to extend the effective duration of the 2012 SCA. However, the rules of this Council are clear and explicit: “A request for amendment of a site certification agreement shall be made in writing by a certificate holder to the council.” WAC 463-66-030 (emphasis supplied). In short, as an unapproved successor in interest to S.D.S. Co., LLC, TCT has no standing to pursue an extension amendment. In that regard, the Council should deny the

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<sup>22</sup>As far as we know, TCT has not mailed or otherwise sought to notify the parties of record in the adjudicative proceeding that an application to transfer or extend the SCA has been filed. This Council’s Rules on Adjudicative Proceedings at WAC 463-30-120 -(3) require: “(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.”

<sup>23</sup>Mr. McMahan represented WRE through the entire adjudication before this Council.

request for amendment of the SCA to TCT.<sup>24</sup>

Moreover, as the presumptive transferee of this SCA, TCT has asked that the request to transfer the SCA be consolidated with the request to amend the SCA itself. Indeed TCT's letter to this Council, dated March 16, 2022, imperiously announced to this Council that it was already "the new owner of Whistling Ridge Energy LLC." Further, that letter indicated that, as the "new owner," it sought an amendment of the SCA, stating that: "we anticipate filing a request for transfer in the next several weeks" and requesting that the SCA amendment and transfer requests be considered "in a single process."<sup>25</sup> Indeed, TCT said: "We ask that the Council not take action on either request until we are prepared to move forward on both."

Also important to this SCA transfer request is the representation of TCT that when the SCA property was transferred to it, it would continue to use the property as timber land. As seen on the attached "Notice of Continuance, Land Classified as Current Use or Forest Land," executed on November 21, 2021, which stated that there was no "reclassification pending for these parcels" to other uses, such as a industrial wind farm."<sup>26</sup> This ignored that the SCA permitted 1,152 acres of the property (classified as Forest Land) to be used for the project.<sup>27</sup> Their "Timber Management Plan" with the Notice of Continuance stated that:

Twin Creeks will acquire approximately 7,700 acres located in Skamania County, Washington classified as Designated Forest Land. This land will be primarily devoted to and used to grow and harvest timber.

TCT did not disclose that it would be seeking to use part of the property covered by the transfer for a wind turbine project.<sup>28</sup>

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<sup>24</sup>The request to extend the term is signed by Mr. McMahan, but it is not clear whether he represents SDS or TCT, or both.

<sup>25</sup>Green Diamond's March 16, 2022 request letter for TCT is Attachment 2.

<sup>26</sup>See Attachment 6 hereto.

<sup>27</sup>Order 868 at page 5.

<sup>28</sup>Though SDS had stated that WRE project was "considered to be part of the timberland properties" (Attachment 4, page 2), when the timberlands were transferred, the SCA was not mentioned. The Real Estate Excise Tax Affidavit filed for the transfer of the property from S.D.S. Co., LLC to Twin Creeks Timber, claimed a tax exemption based on WAC 458-61A-211(2)(c): "The transfer by an entity of its interest in real property to its wholly owned subsidiary." Real Estate Excise Tax Affidavit, emphasis supplied, filed December 16, 2021, Attachment 7. As a result the "Gross Selling Price" for the property on which the wind turbine project is located is listed as "0.00" and no excise tax was paid.

Indeed, the application to amend the SCA for additional time is sought “to undertake due diligence work for the facility” and to take time “to consider commercial viability.” Request at page 4. However, such due diligence should have been part of the due diligence conducted by TCT prior to acquiring SDS’s assets.<sup>29</sup> Indeed, during the SCA process itself, SDS claimed in its Petition for Reconsideration that:

In fact, extensive testimony in the record evidences that the recommended Project likely is **not** economically viable. The A1-A7 turbine corridor has a robust wind resource, and eliminating it and the C1-C8 turbine corridor “kills the project.”

See Tr. At 74:21-24, 149:2-10 (emphasis in original).<sup>30</sup>

(Emphasis in original).<sup>31</sup> TCT acquired a project from a seller (SDS) that had already determined it “likely not economically viable” because this Council had disapproved two of the proposed turbine strings. Presumably, SDS shared the information behind its financial analysis with TCT (as a part of full disclosure) and TCT was fully informed regarding financial feasibility issues. Indeed if TCT had read the FEIS, it would have been informed that:

As discussed above, the proposed Project Area contains a series of ridge lines that are conducive to locating wind turbines, but at the same time are limiting as to where those turbines could be placed. This means that there are limited options for locating wind turbines within the Project Area. Alternative turbine configurations were considered, but were eliminated from further study because

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<sup>29</sup>In fact, SDS had previously entered into a “Short Form Wind Energy Lease Agreement” with Pacificorp Power Marketing on January 29, 2003, one of the purposes of which was: Determine the feasibility of wind energy conversion and other power generation on the property, including studies of wind speed, wind direction and other meteorological data and extracting soil samples.

(Emphasis supplied.) See Attachment 8, page 2. On termination of the lease, “any information regarding the potential and productivity of the property for Wind Energy Purposes collected by Tenant (Pacificorp) will be made available to Owner (SDS) for Owner’s use.” *Id.* at Paragraph 3, page 3. The Lease was signed by Jason Spadaro, SDS’s witness in the Adjudication and was drafted by the same law firm that represented SDS in the 2011 proceedings (Stoel Rives).

The record is clear that there has been years of review, and re-review, of the usefulness of this property for wind turbines. See footnote 34 below.

<sup>30</sup>See “Applicant’s Petition for Reconsideration of Council Orders 4 Nos. 868 and 869” (October 27, 2011) at 2:4-7 enclosed as Attachment 9.

<sup>31</sup>Indeed Puget Sound Energy (PSE) also investigated development of the site, then known as the “Saddleback” project. PSE signed a “System Impact Study Agreement with BPA on January 10, 2008 to identify system construction constraints for the 75 MW of load from the project. See Attachment 10. Like Pacificorp, and now SDS, PSE did not pursue development of a wind project on the property.

they either did not appropriately utilize the wind resource present within the Project Area or compromised the economic feasibility of the proposed Project.<sup>32</sup>

(Emphasis supplied). The current lawyer for TCT (Tim McMahan) is the same lawyer that wrote the Reconsideration request for WRE in October, 2011. TCT came into this proceeding with “eyes wide open.”

It seems likely that the reason TCT did not seek transfer of the SCA before closing is that it did not want to be stuck with a “pig in a poke” and wanted the option to abandon the whole SCA if its transfer request was not granted.

TCT claims that litigation over the project permits pursued by SOSA and Friends exacted “significant cost for the Applicant.”<sup>33</sup> It is not clear what this means, but it is unrelated to the current situation. It was in December, 2020, that the Board of Directors of SDS decided to sell the company; as the new President of the company stated: “They (the Board) decided to sell SDS in its entirety, but will sell piecemeal.”<sup>34</sup> The company was being liquidated and there is no evidence that this had nothing to do with the wind turbine project or the SCA.<sup>35</sup> If the current SCA was an important part of the transaction, surely TCT would not have risked the transfer from SDS not being approved by this Council.<sup>36</sup> There is no indication how much TCT paid for the Site Certification Agreement (if anything), or the terms of the transaction.

In summary, the Council should determine that TCT does not have standing to request an extension of the SCA or its transfer request.

#### **4. CONCLUSION.**

The transfer request is best characterized by the old saying: “it is better to seek forgiveness than permission.” SDS decided it would rid itself of this useless asset by hiding it in a larger transfer, without bothering to inform this Council or interested parties and without following clear regulatory direction to receive prior approval for the transfer. The application to transfer the Whistling Ridge SCA to TCT should be denied for two

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<sup>32</sup>FEIS Section 1.4.3.4, page 1-15.

<sup>33</sup>Amendment Request at 1.

<sup>34</sup>Goldendale Sentinel, December 30, 2020.

<sup>35</sup>As indicated above, there was abundant information about the economic feasibility of the project from the 2003 Wind Energy Lease (Attachment 8) and from the 2009-11 adjudication before this Council.

<sup>36</sup>The only mention of SCA was backhand; i.e. “the Whistling Ridge wind turbine project is currently considered to be part of the timberland properties.” Attachment 4, page 2.

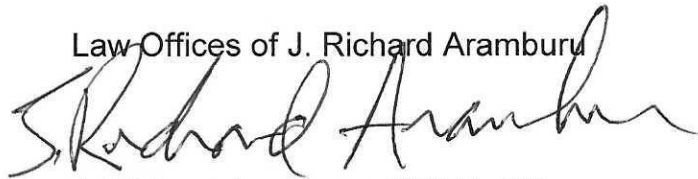
reasons.

First, the SCA has been abandoned by the certificate holder SDS because it did not seek to have the transfer to TCT approved by this council.<sup>37</sup>

Second, the applicant TCT does not have standing to make this application because it is not the owner of the SCA. TCT cannot qualify as the owner of the current SCA unless the Council receives and passes on a request for transfer. The evidence is clear that TCT knowingly avoided the transfer requirements and has no interest in pursuing the project described in the SCA.

For these reasons the request to approve the transfer should be denied.

Law Offices of J. Richard Aramburu

A handwritten signature in black ink, appearing to read "J. Richard Aramburu", written in a cursive style.

J. Richard Aramburu, WSBA 466  
Attorney for Save Our Scenic Area

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<sup>37</sup>In addition, the SCA expired by its terms on March 5, 2022, ten years from its approval by the Governor as demonstrated in Friends and SOSA separate filing.

### **ATTACHMENT LIST**

1. Application to Transfer Site Certification Agreement for the Whistling Ridge Energy Project (March 2, 2022)
2. Letter from Green Diamond for Twin Creeks Timber dated March 16, 2022
3. Whistling Ridge FEIS Figure 2-1, Proposed Array Locations
4. December 30, 2020 Goldendale Sentinel article re sale of SDS
5. SDS Lumber Co. Press Release (9-30-21)
6. Skamania County Recorded Document 2021-4124 (SDS-TCT Notice of Continuance, Land Classified as Current Use or Forest Land)
7. SDS-TCT Real Estate Excise Tax Affidavit #35880
8. Recorded Document 2003-147552, "Short Form Wind Energy Lease Agreement"
9. WRE Petition for Reconsideration of EFSEC Orders, dated October 27, 2011
10. 2008 BPA System Impact Study for Saddleback Project per Agreement with Puget Sound Energy