



SKAMANIA COUNTY PLANNING COMMISSION

AGENDA

Tuesday, August 16, 2022, 6:15 PM

SKAMANIA COUNTY COURTHOUSE ANNEX, LOWER MEETING ROOM
170 NW VANCOUVER AVENUE, STEVENSON, WA 98648

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENT

5. AGENDA ITEMS

- a. Approve minutes for the June 21, 2022, Planning Commission Meeting.
- b. Workshop to discuss zoning of parcels #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 pursuant to Board of County Commissioners Resolution No. 2019-31.

6. PLANNING COMMISSION BUSINESS

7. ADJOURN

Remote Participation Instructions:

- To join the Zoom meeting online, visit <https://us02web.zoom.us/j/87923882261>
- To join by telephone, call **(253) 215-8782**, and enter the following meeting ID when prompted: **879 2388 2261**

For Public Comment:

- On Zoom app: click "Raise Hand" icon
- On telephone: hit *9 to raise your hand
- Or, email your comments to permitcenter@co.skamania.wa.us



SKAMANIA COUNTY PLANNING COMMISSION

MINUTES

Tuesday, June 21, 2022, 6:15 PM

SKAMANIA COUNTY COURTHOUSE ANNEX, LOWER MEETING ROOM
170 NW VANCOUVER AVENUE, STEVENSON, WA 98648

1. CALL TO ORDER

Anita Gahimer Crow called the meeting to order at 6:20 PM. John DiPalma nominated Anita Gahimer Crow to act as chair in the absence of the chair and vice chair.

2. PLEDGE OF ALLEGIANCE

Ken Bajema led the Pledge of Allegiance.

3. ROLL CALL

Planning Commissioners Present: Ken Bajema, Ann Cline, Sue Davis, Anita Gahimer Crow, John DiPalma.

Staff Present: Alan Peters, Mike Beck, Mandy Hertel, Marlon Morat

4. AGENDA ITEMS

a. Approve minutes for the May 17, 2022, Planning Commission Meeting.

Ken Bajema moved to approve the minutes; John DiPalma seconded. Motion passed 5-0.

b. Information Item – Building Official Marlon Morat discussed the County's permit requirements for agricultural buildings and accessory buildings. Mr. Morat explained permit processing timelines and fees and responded to questions and comments from the Planning Commission members.

5. PLANNING COMMISSION BUSINESS

The Planning Commission will begin reviewing the zoning for the Whistling Ridge energy project site by the end of August.

6. ADJOURN

Anita Gahimer Crow adjourned the meeting at 7:05 PM.



Skamania County
Community Development Department
Building/Fire Marshal • Environmental Health • Planning
Skamania County Courthouse Annex
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MEMORANDUM

TO: Planning Commission
FROM: Alan Peters, AICP, Director
DATE: August 10, 2022
RE: Whistling Ridge Zoning Review

Pursuant to Resolution No. 2019-31 passed by the Board of County Commissioners on August 20, 2019, the Planning Commission is to initiate a review of the zoning of parcels #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 no later than August 31, 2022. These three parcels total approximately 3,570 acres in Underwood, Washington and are owned by TCT Columbia Holdings LLC and Broughton Lumber Co. A portion of these parcels are within the Columbia River Gorge National Scenic Area and most of the remaining acreage is in the Unmapped (UNM) designation.

Figure 1. Map of parcels #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00.

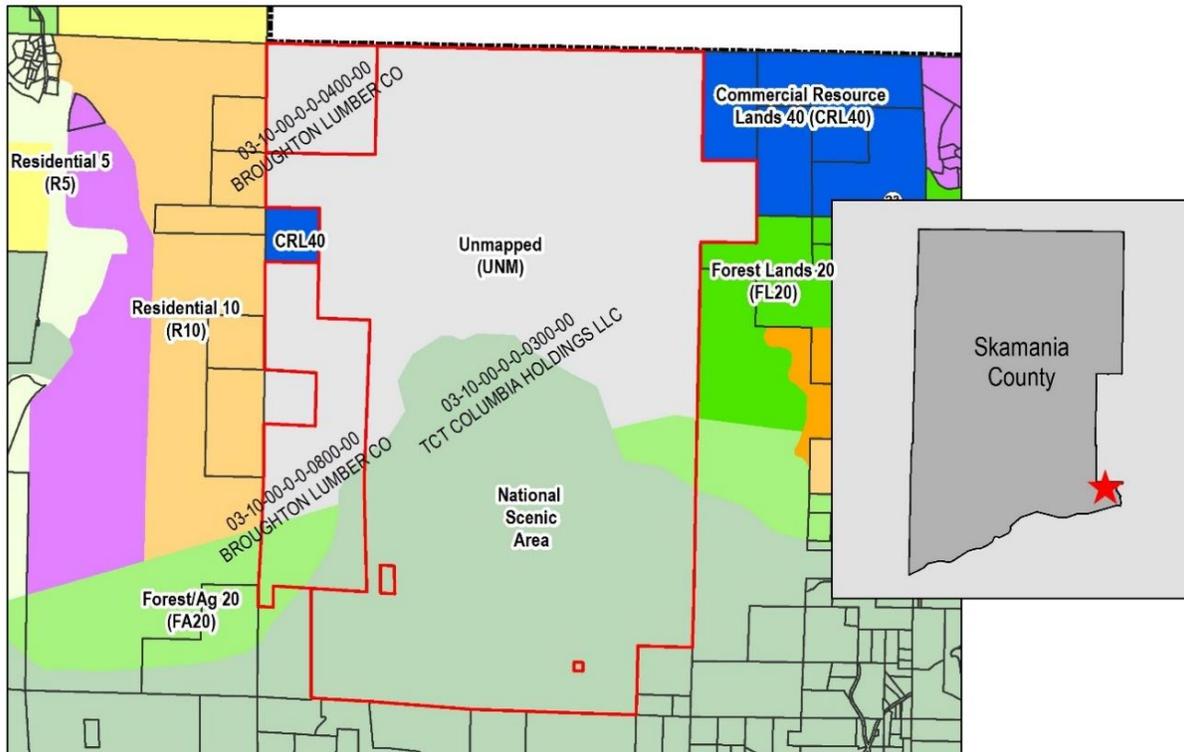


Table 1. Parcel Information

Parcel no. 03-10-00-0-0-0400-00	
Owner	Broughton Lumber Co.
Acreage	155 acres
Unmapped (UNM) Acreage	All 155 acres (100%) are Unmapped
Current Use	Commercial timber
Comprehensive Plan Designation	Conservancy
Zoning	Unmapped

Parcel no. 03-10-00-0-0-0800-00	
Owner	Broughton Lumber Co.
Acreage	365 acres
Unmapped (UNM) Acreage	250 acres (68%) are Unmapped
Current Use	Commercial timber
Comprehensive Plan Designation	Conservancy/National Scenic Area
Zoning	Unmapped, Forest/Ag 20, and GMA-Commercial Forest

Parcel no. 03-10-00-0-0-0300-00	
Owner	TCT Columbia Holdings LLC
Acreage	3050
Unmapped (UNM) Acreage	1622 acres (53%) are Unmapped
Current Use	Commercial timber
Comprehensive Plan Designation	Conservancy
Zoning	Unmapped, Forest/Ag 20, and GMA-Commercial Forest

Background – Prior Planning Efforts

The subject properties are partially located in the Unmapped (UNM) designation, meaning that no formal adoption of any zoning has occurred for the property. Per SCC 21.64.020, all uses which have not been declared a nuisance by statute, resolution, ordinance, or court of jurisdiction are allowable in this designation.

Zoning of these properties was previously considered by the county in 2008 and again in 2019. Following the July 2007 adoption of the County’s Comprehensive Plan, the Planning Commission began a rezone effort that was intended to implement the newly adopted Comprehensive Plan. After several Planning Commission and Board of County Commissioner’s workshops throughout 2008, the Planning Commission recommended map and text changes in September 2008. The rezone effort was abandoned in February 2009.

This effort was picked up again by the Planning Commission throughout 2017, 2018, and 2019. During this period, the Planning Commission embarked on a review process of privately owned properties in the "Unmapped" zone to consider them for rezoning. The Planning Commission identified 113 properties within this designation and ended up recommending that 110 of these properties be rezoned. The Board of County Commissioners approved rezoning all 110 properties identified by the Planning Commission, making only a few changes to the Planning Commission's recommendations.

- In September 2018, the Board adopted Ordinance No. 2018-08, rezoning 37 properties in the Stabler/Wind River Valley area to the Residential 1, Residential 2, Forest Lands 20, Forest Lands 20, and Commercial Resource Lands 40 zones.
- In December 2018, the Board adopted Ordinance No. 2018-10, rezoning 16 parcels in the North Bonneville/Rock Creek area to Commercial Resource Lands 40.
- In June 2019, the Board adopted Ordinance No. 2019-01, rezoning 30 properties in the High Lakes area to Commercial Resource Lands 40, and 27 properties in Underwood to Residential 10, Forest Lands 20, Commercial Resource Lands 40, Northwestern Lakes Residential 2, Northwestern Lakes Residential 5, and Natural.

To inform their decision-making, the Planning Commission relied on a public process include notifications to individual property owners, public workshops, and public hearings. The Planning Commission also reviewed work from prior planning efforts, including the County's 2007 Comprehensive Plan process and draft zoning maps prepared by the Planning Commission in 2008. Staff also provided the Planning Commission with information about each property, including tax assessment records, current zoning and comprehensive plan designations, shoreline environment designations, and land division records.

During its review of the Underwood area, the Planning Commission held five workshops between February and May 2019, in Underwood and Stevenson. On June 4, 2019, the Planning Commission held a public hearing to consider zoning map amendments in the Underwood area and forwarded a recommendation to the Board of County Commissioners to rezone 27 of 30 parcels in the area. The Planning Commission continued the hearing for the three subject parcels to a subsequent meeting on July 16, 2019. At this meeting, the Planning Commission declined to make any recommendations to rezone the property, but instead recommended that the County retain the existing zoning of these properties, revisiting the zoning again in three years' time.

Subsequent to the Planning Commission's recommendation, the Board of County Commissioners adopted Resolution No. 2019-31 (attached to this memo) which maintained the current zoning of these properties but stated that the Planning Commission would reconsider the zoning of these parcels again, initiating a new review no later than August 31, 2022.

Background - Whistling Ridge Energy Project

The subject properties are associated with the Whistling Ridge Energy Project. Whistling Ridge is a proposed wind energy facility that was approved by the State of Washington on March 5, 2012, on recommendation by the state's Energy Facility Site Evaluation Council (EFSEC).

The project is proposed to include up to fifty 1.2- to 2.5-megawatt wind turbines with a maximum generating capacity of 75 MW, to be located on the forested ridges of Saddleback Mountain. The Project includes an operation and maintenance facility, underground collector lines and systems, and other ancillary facilities. The proposed project will cover 1,152 acres across these three parcels.

The project and related permits were subsequently appealed through the state and federal courts, but these appeals failed and concluded in March 2018. The project has not yet materialized, but it has been sold with the recent sale of SDS properties in part to TCT Columbia Holdings LLC and the new owner is in the process of evaluating the project's viability.

EFSEC provides a one-stop siting process for major energy facilities in Washington State. EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities in Washington and specifies the conditions of construction and operation. If approved, a Site Certification Agreement is issued in lieu of any other individual state or local agency permits. This means that EFSEC approved projects need not comply with local zoning regulations. However, the project does comply with the Unmapped (UNM) designation.

With EFSEC's approval in place, county staff and the applicant were hesitant to rezone the property in 2019. Furthermore, rezoning with an active EFSEC site certification would have been in violation of RCW 80.50.090 which previously precluded local changes to zoning in situations where EFSEC determined that the project is consistent with local zoning:

RCW 80.50.090(2)

Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

This language has been removed from RCW 80.50.090 as of June 2022.

The county was also persuaded by language in EFSEC's October 6, 2011, adjudicative order, which provides some additional insight into this restriction:

We conclude that the evidence and applicable law support the County's certificate of consistency, that Project opponents have failed to present a credible case against it, and

that the Project is therefore consistent with the Conservancy designation in the Comprehensive Plan. The County will be prohibited from changing the land use plan and zoning ordinances applicable to project lands for the life of the Certificate.

Additionally, the Washington State Supreme Court's August 29, 2013, ruling stated:

After the informational public hearing, EFSEC is required to "conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances." RCW 80.50.090(2). If consistent, the local jurisdiction cannot subsequently amend any rules to affect the proposed site. If inconsistent, EFSEC can preempt the conflicting regulations and allow the project to move forward. RCW 80.50.110(2); Residents 165 Wn.2d at 311 n.13.

Current status of Whistling Ridge Project

The status of the Whistling Ridge project is uncertain at this time. The new owners are evaluating the project and have also filed a request to EFSEC to extend the term of the Site Certification Agreement, though the effective date of the Site Certification is also uncertain. WAC 463-68-030 states that "construction may start anytime within ten years of the effective date of the site certification agreement". The site certification was signed by Governor Christine Gregoire on March 5, 2012, but was not signed by Whistling Ridge Energy until November 18, 2013. Furthermore, various appeals were not concluded until July 11, 2018.

Staff's current understanding of the project is based on a publicly available extension request submitted by Whistling Ridge to EFSEC on March 2, 2022 (attached to this memo), and a letter received from Green Diamond Management Company Area manager Jon Cole dated August 4, 2022 (attached). Whistling Ridge is requesting that the site certificate be extended until November 2025. EFSEC has not yet decided on the extension request. In Whistling Ridge's request, they state:

The extension will allow Whistling Ridge Energy, through its new owner TCT, to review and if feasible to propose the installation of fewer but taller wind turbine generators and associated facilities within the designated and approved micrositing corridors. Additionally, Attachment A outlines what the Applicant considers to be related and necessary actions, including studies and reports needed to complete the amendment request. The Applicant would confer with EFSEC staff to ensure that all necessary information is developed. Most importantly, Whistling Ridge proposes to update natural resource studies including season-specific data (e.g. avian nesting surveys) and new visual simulations from key viewing areas (KVAs) within the Columbia River Gorge Scenic Area. Commencing these studies, including consultation with WDFW, local Tribes, and other agencies concerning sufficiency of information needed for updated wildlife and other surveys, will be essential.

Planning Commission Responsibility

The Planning Commission makes zoning recommendations in an advisory capacity to the Board of County Commissioners. Resolution No. 2019-31 passed by the Board of County Commissioners on August 20, 2019, states the following:

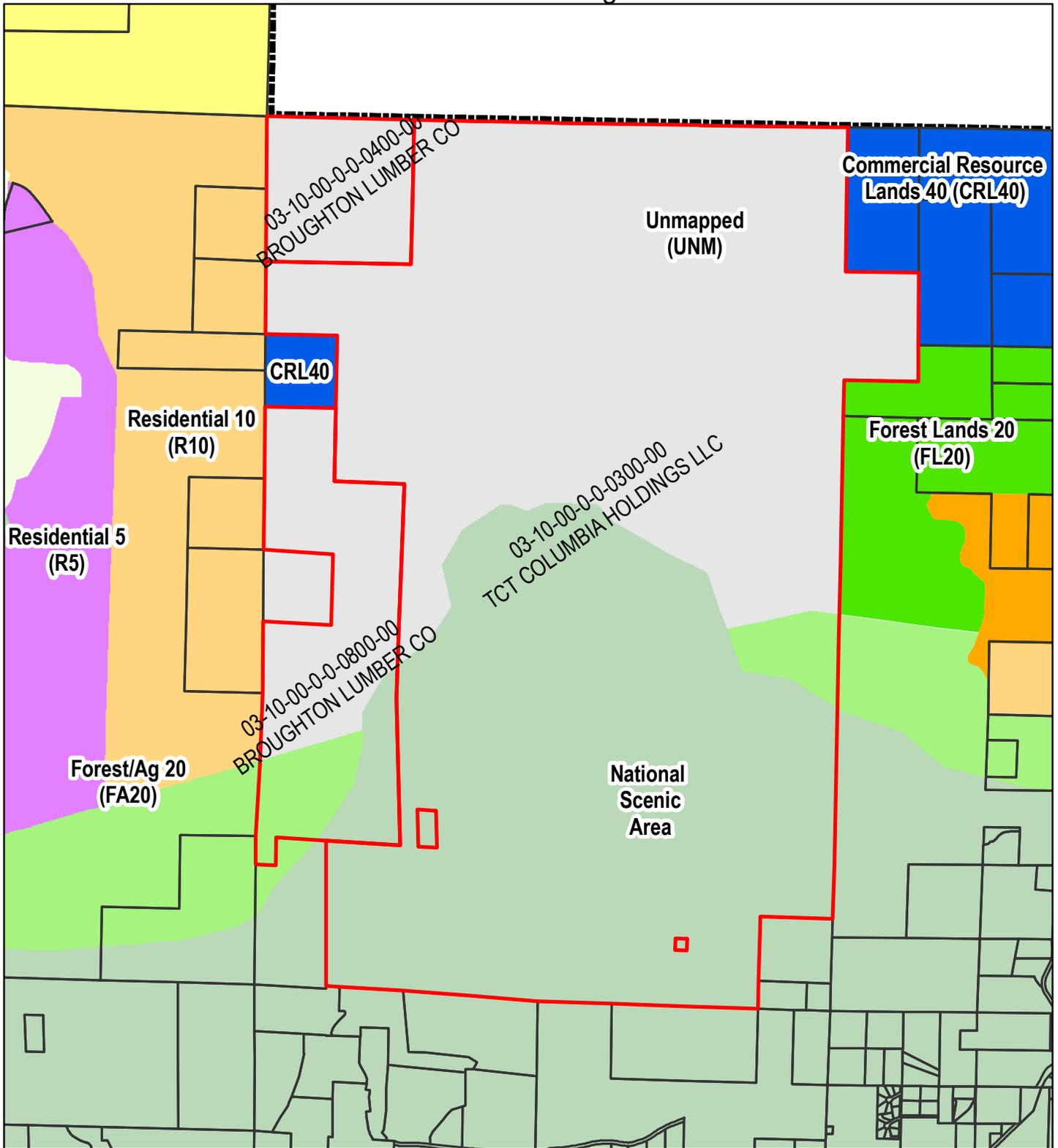
The Planning Commission shall reconsider the zoning of parcels #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 again after the Site Certification Agreement for the Whistling Ridge Energy Project expires and/or RCW 80.50.090 no longer precludes rezoning of these parcels. The Planning Commission shall initiate this review no later than August 31, 2022.

The Planning Commission has satisfied the Board's directive to initiate review by August 31, 2022. The Planning Commission does not need to take any action at its August meeting, but should be prepared to offer staff direction on the review process and if additional meetings or hearings should be scheduled to continue this review.

As part of its review, the Planning Commission should consider if now is the appropriate time to reconsider the zoning of the subject parcels in light of the status of the Site Certification Agreement. The Planning Commission may choose to defer further action until a later date. Alternatively, the Planning Commission may forward a recommendation to the Board on the zoning of the subject properties. The Planning Commission may forward a recommendation to rezone or to maintain the existing designations. Such recommendation should be made only after a public hearing and after Planning Commission review of alternative zoning designations for the subject property.

Attachments:

1. Zoning Map, Whistling Ridge Energy Project
2. Board of County Commissioners Resolution No. 2019-31
3. July 10, 2019, Staff Report to Planning Commission
4. Whistling Ridge Energy request for EFSEC extension, March 2, 2022
5. Letter from Jon Cole, Green Diamond Management Company Area Manager, August 4, 2022



DISCLAIMER: This map product was prepared by Skamania County and is for information purposes only. It may not have been prepared for, or be suitable for legal, engineering, or surveying purposes.

ZONING MAP - Whistling Ridge Energy Project

Underwood Area Zoning Review



SKAMANIA COUNTY
Community Development Department



RESOLUTION No. 2019-31

A RESOLUTION ACKNOWLEDGING THE PLANNING COMMISSION'S MOTION TO RETAIN THE EXISTING ZONING OF CERTAIN PARCELS IN UNDERWOOD

WHEREAS, the Board of County Commissioners adopted Resolution 2017-30 on August 8, 2017, and directed the Planning Commission to review the zoning of privately-owned parcels within the Unmapped zone; and

WHEREAS, the Board of County Commissioners, on recommendation from the Planning Commission, rezoned 109 formerly Unmapped parcels in 2018 and 2019; and

WHEREAS, three parcels in the Unmapped zone: #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 are part of the Whistling Ridge Energy Project (WREP) approved by the State of Washington on March 5, 2012, on recommendation by the state's Energy Facility Site Evaluation Council (EFSEC); and

WHEREAS, on October 6, 2011, EFSEC issued a Final Adjudicative Order, concluding that WREP is consistent with the County's use provisions, including the Unmapped zone and the Conservancy designation of the Comprehensive Plan; and

WHEREAS, RCW 80.50.090 prohibits the County from changing land use plans or zoning ordinances so as to affect the proposed site of a project determined consistent with local land use provisions by EFSEC; and

WHEREAS, the Planning Commission, after holding a public hearing on July 16, 2019, approved a motion to retain the existing zoning of these parcels in order to not violate RCW 80.50.090; and

WHEREAS, the Planning Commission also moved to revisit the zoning of these parcels in three years, after WREP's approval expires;

NOW THEREFORE BE IT HEREBY RESOLVED, that:

1. The Board of County Commissioners acknowledges the Planning Commission's efforts over the past two years in reviewing the zoning of Unmapped parcels.
2. The Board of County Commissioners acknowledges the Planning Commission's July 16, 2019 motion.
3. The Planning Commission shall reconsider the zoning of parcels #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 again after the Site Certification Agreement for the Whistling Ridge Energy Project expires and/or RCW 80.50.090 no longer precludes rezoning of these parcels. The Planning Commission shall initiate this review no later than August 31, 2022.

PASSED THIS 20th DAY OF August 2019.



**SKAMANIA COUNTY
BOARD OF COUNTY COMMISSIONERS**

[Signature] 8/20/19
Chair Date

J. M. Lamer 8.20.19
Commissioner Date

[Signature] 8-20-19
Commissioner Date

ATTEST:

Debbie Shaw 8.20.19
Clerk of the Board Date

APPROVED AS TO FORM ONLY:

[Signature] 8/20/19
Prosecuting Attorney Date



Skamania County Community Development Department

Building/Fire Marshal • Environmental Health • Planning

Skamania County Courthouse Annex

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Phone: 509-427-3900 Inspection Line: 509-427-3922

STAFF REPORT

TO: Skamania County Planning Commission
FROM: Alan Peters, Assistant Planning Director

REPORT DATE: July 10, 2019

HEARING DATE: July 16, 2019

PROPOSAL: Zoning Map amendments affecting Unmapped lands in the Underwood (Parcels #6, #8, and #24)

Background

The Skamania County Planning Commission is completing a review of zoning in parts of unincorporated Skamania County in the Underwood area. This review is limited to any privately-owned parcels within the Unmapped (UNM) zone. Community Development Department Staff has identified 30 parcels in the study area. After five workshops held February through May 2019, the Planning Commission held a hearing on June 4, 2019, regarding proposed zoning map amendments. The Planning Commission forwarded a recommendation to the Board of County Commissioners to rezone 27 parcels. Zoning for these 27 parcels was approved by the Board of County Commissioners on June 25, 2019. The Planning Commission closed the hearing with regard to those 27 parcels, but continued the hearing to the July 16, 2019, Planning Commission meeting for three additional parcels:

#6	03-10-00-0-0-0400-00	Broughton Lumber Co
#8	03-10-00-0-0-0800-00	Broughton Lumber Co
#24	03-10-00-0-0-0300-00	SDS Co

These three parcels are associated with the Whistling Ridge Energy Project that was approved by the State of Washington on March 5, 2012, on recommendation by the state's Energy Facility Site Evaluation Council (EFSEC). The project covers a site of about 1,000 total acres on property owned by SDS Co/Broughton Lumber. This project site includes the entirety of Parcel 6 and portions of Parcels 8 and 24. The site is approved for wind turbine generators, access roadways, and electrical connection systems. The Washington Supreme Court upheld this approval in a decision issued August 29, 2013.

Statutory limits on rezoning

Per RCW 80.50.090, the County is precluded from changing the zoning of the proposed site because EFSEC previously determined that the proposal is consistent with the existing zoning of Unmapped (UNM).

RCW 80.50.090(2)

Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

EFSEC's Adjudicative Order, dated October 6, 2011, provides some additional insight into the meaning of this statute:

We conclude that the evidence and applicable law support the County's certificate of consistency, that Project opponents have failed to present a credible case against it, and that the Project is therefore consistent with the Conservancy designation in the Comprehensive Plan. The County will be prohibited from changing the land use plan and zoning ordinances applicable to project lands for the life of the Certificate.

The Washington State Supreme Court's August 29, 2013 ruling also states:

After the informational public hearing, EFSEC is required to "conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances." RCW 80.50.090(2). If consistent, the local jurisdiction cannot subsequently amend any rules to affect the proposed site. If inconsistent, EFSEC can preempt the conflicting regulations and allow the project to move forward. RCW 80.50.110(2); Residents 165 Wn.2d at 311 n.13.

Staff Recommendation

To not violate RCW 80.50.090(2), Staff recommends that the Planning Commission not make any recommendation to change the zoning of Parcel #6, #8, and #24.

While choosing not to rezone these properties does not require any formal action, the Planning Commission may adopt a motion in order to state its reason for retaining the existing zoning.

Analysis of Alternatives

There are several alternative actions that the Planning Commission could take with respect to these three parcels. The following alternatives were proposed by the Friends of the Columbia Gorge and Save Our Scenic Area in their June 4, 2019, letter and were discussed in some extent at the June 4, 2019, Planning Commission meeting.

1. Rezone Parcel #6, #8, and #24 to Commercial Resource Lands 40 (CRL-40) with the adoption of the following proviso:

This zoning shall not apply to the development of the Whistling Ridge Energy Project ("WREP") pursuant to the March 5, 2012 Site Certification Agreement ("SCA") for the WREP, so long as the SCA remains in effect.

If the County could rezone these parcels, CRL-40 might be an appropriate zone option for them. This zone is consistent with the Conservancy designation and has been applied to some adjacent parcels. Other adjacent zones include Forest Lands 20, Forest Agriculture 20, and Residential 10.

The use of these parcels is also consistent with this zone as they are primarily devoted to growing trees for long-term commercial timber production and are large in acreage (the UNM portions are 155 acres, 250 acres, and 1622 acres).

Staff does not recommend this alternative. However, should the Planning Commission recommend this alternative, Staff recommends the following additional language be added to any adopted ordinance:

In order to comply with RCW 80.50.090(2), this zoning shall not apply to the development of the Whistling Ridge Energy Project ("WREP") pursuant to the March 5, 2012 Site Certification Agreement ("SCA") for the WREP, so long as the SCA remains in effect.

2. Rezone the portions Parcel #8 and Parcel #24 that are outside the approved project site.

The entirety of Parcel 6 is located within the approved project site. Friends' June 4, 2019, letter states that the "at a minimum, the Unmapped portions of parcels #8 and #24 outside the approved WREP site (which total 250.5 acres and 1,226.37 acres, respectively) can and should be zoned now." Based on Staff's review, only 74.56 acres of Parcel #8 is Unmapped and outside of the boundaries of the approved project site.

Staff does not recommend this alternative. However, should the Planning Commission recommend this alternative, Staff recommends that any adopting ordinance specifically exclude the legal description of the site boundary as provided in the Site Certification Agreement.

Review Criteria and Findings

Choosing not to rezone these properties does not require any formal action, though the Planning Commission may adopt a motion in order to state its reason for retaining the existing zoning. The following applies only if the Planning Commission wishes to forward a recommendation the Board of County Commissioners to rezone these parcels in any way.

Skamania County Code (SCC) Chapter 21.18 – Zoning Text and Map Amendments

21.18.030 County initiated map amendments.

County initiated map amendments are amendments to the official zoning map that are not proposed for specific parcels by the landowners of the parcels. Rather, the amendments are generally countywide in nature. These legislative actions usually occur when a new zone classification is created, when the board of county commissioners has adopted an amendment to the land use maps in the comprehensive plan, or when it is determined that the existing zone classification is out of character with the surrounding area. Such action shall occur in accordance with the procedures set forth in RCW 36.70. County initiated map amendments may only be initiated by the board of county commissioners or the planning commission.

Staff Findings:

Any proposed amendments would be initiated by the Planning Commission under the direction of the Board of County Commissioners. The Planning Commission opened a public hearing on June 4, 2019, and continued this hearing to the July 16, 2019, meeting date. The amendments are subject to the procedures in RCW 36.70 as outlined below.

Revised Code of Washington (RCW) 36.70 Planning Enabling Act

36.70.580 Official controls—Public hearing by commission.

Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing.

36.70.590 Official controls—Notice of hearing.

Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county at least ten days before the hearing. The board may prescribe additional methods for providing notice.

36.70.600 Official controls—Recommendation to board—Required vote.

The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate.

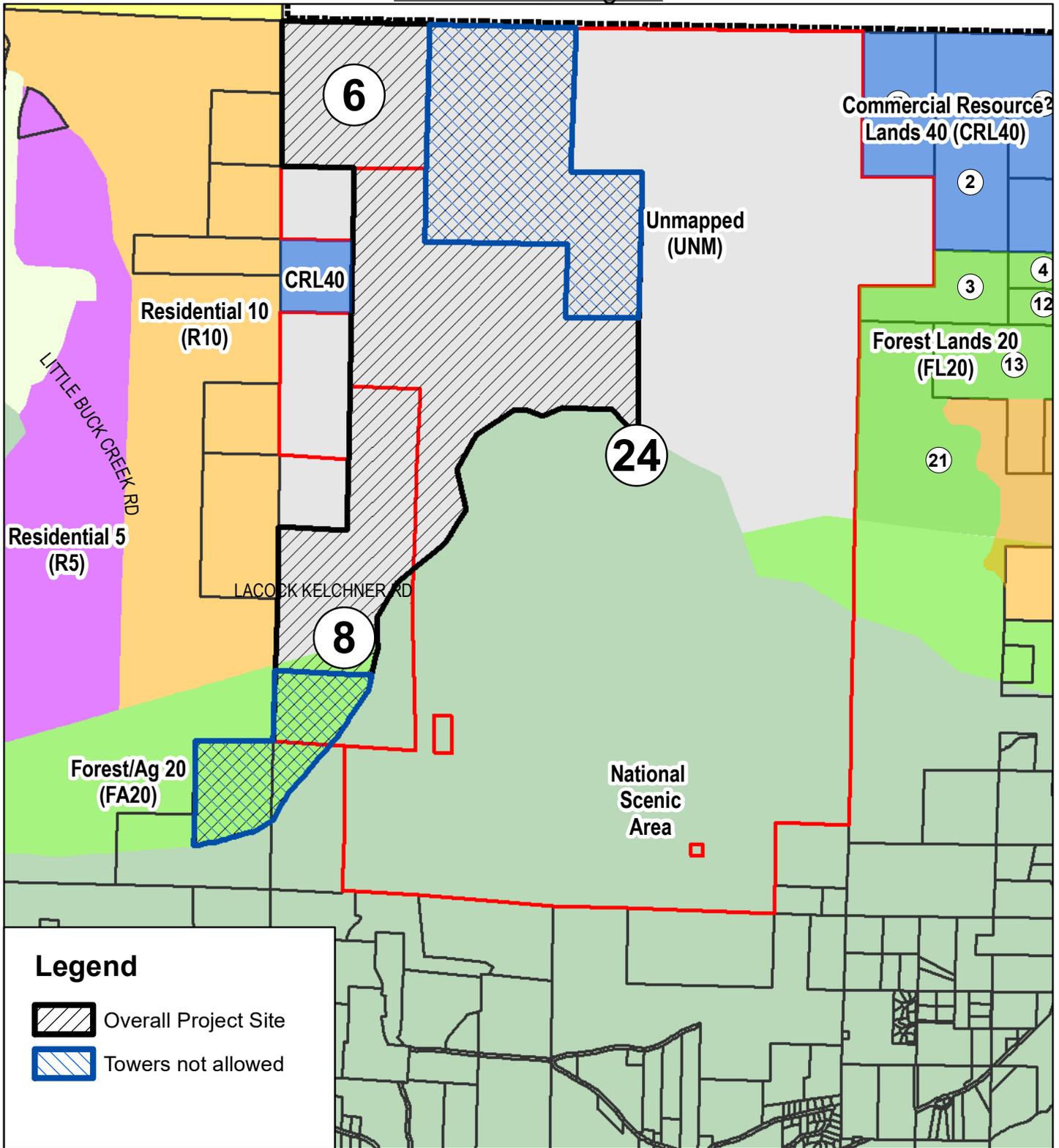
Staff Findings:

Any proposed amendments would be initiated by the Planning Commission under the direction of the Board of County Commissioners. A public hearing on the proposed amendments was opened on June 4, 2019. Notice of this hearing was published in the Skamania County Pioneer on May 15, 2019, and on the County's website. The Planning Commission continued this hearing to the July 16, 2019, meeting date, at the June 4, 2019, meeting, consistent with the requirements of RCW 42.30.100.

After closing the continued public hearing, the Planning Commission may make a recommendation to the Board of County Commissioners on any proposal. Staff has prepared draft motions for the Planning Commission's consideration.

Attachments

1. Draft Motion – Staff Recommendation
2. Draft Motion – Alternative #1
3. Draft Motion – Alternative #2



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ZONING MAP - Whistling Ridge Energy Project

Underwood Area Zoning Review



SKAMANIA COUNTY
Community Development Department





**Skamania County
Community Development Department**

Building/Fire Marshal • Environmental Health • Planning

Skamania County Courthouse Annex

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Phone: 509-427-3900 Inspection Line: 509-427-3922

Staff Recommendation

**SKAMANIA COUNTY PLANNING COMMISSION MOTION
TO RETAIN EXISTING ZONING OF PARCELS 6, 8, AND 24**

The Skamania County Planning Commission conducted a public hearing to consider zoning map amendments as part of its review of privately-owned Unmapped lands in the Underwood area on June 4, 2019, and July 16, 2019.

I, _____, do hereby move that the Skamania County Planning Commission make the following Findings of Fact, and Conclusions.

FINDINGS OF FACT

1. Certain privately-owned parcels in unincorporated Skamania County have a zoning designation of Unmapped. Although this designation is consistent with the Comprehensive Plan, the Board adopted Resolution 2017-30 on August 8, 2017, and directed the Planning Commission to review these Unmapped parcels.
2. The Planning Commission initiated its review of 30 Unmapped parcels in the Underwood area on February 13, 2019, and held additional workshops on March 5th, March 19th, April 2nd, and May 7th of 2019, and forwarded a recommendation to the Board of County Commissioners on June 4, 2019, to rezone 27 of these parcels.
3. Three parcels: #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 are part of the Whistling Ridge Energy Project (WREP) approved by the State of Washington on March 5, 2012, on recommendation by the state's Energy Facility Site Evaluation Council (EFSEC).
4. These three parcels are located within the Unmapped zone.
5. On October 6, 2011, EFSEC issued a Final Adjudicative Order, concluding that the project is consistent with local land use provisions, including the Unmapped zone and the Conservancy designation of the Comprehensive Plan.

6. RCW 80.50.090 prohibits the county from changing land use plans or zoning ordinances so as to affect the proposed site of a project determined consistent with local land use provisions by EFSEC.

CONCLUSIONS

To not violate RCW 80.50.090(2), the County cannot change land use plans or zoning ordinances to affect the proposed site of the Whistling Ridge Energy Project.

MOTION

Based upon the findings of fact and conclusions, I move that the Planning Commission retain the existing zoning of Parcels 6, 8, and 24 and forward no recommendation to rezone these parcels.

Attachment 3. Page 9.

Motion seconded by _____.

AYE

NAY

Lesley Apple Haskell

John Prescott

Dee Bajema

Tony Coates

Mathew Joy

Cliff Nutting

Cyndi Soliz

Planning Commission Chair

Date

Secretary

Date



**Skamania County
Community Development Department**

Building/Fire Marshal • Environmental Health • Planning

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Alternative #1

**SKAMANIA COUNTY PLANNING COMMISSION
MOTION TO RECOMMEND APPROVAL OF
AMENDMENTS TO THE ZONING MAP FOR PARCELS 6, 8, AND 24**

The Skamania County Planning Commission conducted a public hearing to consider zoning map amendments as part of its review of privately-owned Unmapped lands in the Underwood area on June 4, 2019, and July 16, 2019.

I, _____, do hereby move that the Skamania County Planning Commission make the following Findings of Fact, and Conclusions.

FINDINGS OF FACT

1. RCW 36.70 authorizes Skamania County (the County) to adopt or amend zoning regulations and a zoning map.
2. Certain privately-owned parcels in unincorporated Skamania County have a zoning designation of Unmapped. Although this designation is consistent with the Comprehensive Plan, the Board adopted Resolution 2017-30 on August 8, 2017, and directed the Planning Commission to review these Unmapped parcels.
3. The Planning Commission initiated its review of 30 Unmapped parcels in the Underwood area on February 13, 2019, and held additional workshops on March 5th, March 19th, April 2nd, and May 7th of 2019, and forwarded a recommendation to the Board of County Commissioners on June 4, 2019, to rezone 27 of these parcels.
4. Three parcels: #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 are part of the Whistling Ridge Energy Project (WREP) approved by the State of Washington on March 5, 2012, on recommendation by the state's Energy Facility Site Evaluation Council (EFSEC).
5. On October 6, 2011, EFSEC issued a Final Adjudicative Order, concluding that the project is consistent with local land use provisions, including the Unmapped zone and the Conservancy designation of the Comprehensive Plan.

6. RCW 80.50.090 prohibits the county from changing land use plans or zoning ordinances so as to affect the proposed site of a project determined consistent with local land use provisions by EFSEC.
7. The proposed zoning map amendments are consistent with the Comprehensive Plan's Conservancy Designation.

CONCLUSIONS

Based on the Staff Report, public comment, and deliberations, the proposed amendments protect the general health, safety, and welfare of the public, and should be recommended to the Board of County Commissioners for approval.

RECOMMENDATION

Based upon the findings of fact and conclusions, I move that the Planning Commission recommend to the Board of County Commissioners rezone Parcels 6, 8, and 24 to Commercial Resource Lands 40 (CRL40) with the following stipulation:

In order to comply with RCW 80.50.090(2), this zoning shall not apply to the development of the Whistling Ridge Energy Project ("WREP") pursuant to the March 5, 2012 Site Certification Agreement ("SCA") for the WREP, so long as the SCA remains in effect.

Attachment 3. Page 12.

Motion seconded by _____.

AYE

NAY

Lesley Apple Haskell

John Prescott

Dee Bajema

Tony Coates

Mathew Joy

Cliff Nutting

Cyndi Soliz

Planning Commission Chair

Date

Secretary

Date



Skamania County
Community Development Department
Building/Fire Marshal • Environmental Health • Planning
Skamania County Courthouse Annex
Post Office Box 1009
Stevenson, Washington 98648
Phone: 509-427-3900 Inspection Line: 509-427-3922

Alternative #2

SKAMANIA COUNTY PLANNING COMMISSION
MOTION TO RECOMMEND APPROVAL OF
AMENDMENTS TO THE ZONING MAP FOR PARCELS 8 AND 24

The Skamania County Planning Commission conducted a public hearing to consider zoning map amendments as part of its review of privately-owned Unmapped lands in the Underwood area on June 4, 2019, and July 16, 2019.

I, _____, do hereby move that the Skamania County Planning Commission make the following Findings of Fact, and Conclusions.

FINDINGS OF FACT

1. RCW 36.70 authorizes Skamania County (the County) to adopt or amend zoning regulations and a zoning map.
2. Certain privately-owned parcels in unincorporated Skamania County have a zoning designation of Unmapped. Although this designation is consistent with the Comprehensive Plan, the Board adopted Resolution 2017-30 on August 8, 2017, and directed the Planning Commission to review these Unmapped parcels.
3. The Planning Commission initiated its review of 30 Unmapped parcels in the Underwood area on February 13, 2019, and held additional workshops on March 5th, March 19th, April 2nd, and May 7th of 2019, and forwarded a recommendation to the Board of County Commissioners on June 4, 2019, to rezone 27 of these parcels.
4. Three parcels: #03-10-00-0-0-0400-00, #03-10-00-0-0-0800-00, and #03-10-00-0-0-0300-00 are part of the Whistling Ridge Energy Project (WREP) approved by the State of Washington on March 5, 2012, on recommendation by the state’s Energy Facility Site Evaluation Council (EFSEC).
5. On October 6, 2011, EFSEC issued a Final Adjudicative Order, concluding that the project is consistent with local land use provisions, including the Unmapped zone and the Conservancy designation of the Comprehensive Plan.

6. RCW 80.50.090 prohibits the county from changing land use plans or zoning ordinances so as to affect the proposed site of a project determined consistent with local land use provisions by EFSEC.
7. Portions of Parcel #03-10-00-0-0-0800-00 and Parcel #03-10-00-0-0-0300-00 are located outside of the boundaries of the approved project site.
8. The proposed zoning map amendments are consistent with the Comprehensive Plan's Conservancy Designation.

CONCLUSIONS

Based on the Staff Report, public comment, and deliberations, the proposed amendments protect the general health, safety, and welfare of the public, and should be recommended to the Board of County Commissioners for approval. Per RCW 80.50.090(2), the County cannot change land use plans or zoning ordinances to affect the proposed site of the Whistling Ridge Energy Project.

RECOMMENDATION

Based upon the findings of fact and conclusions, I move that the Planning Commission recommend to the Board of County Commissioners rezone Parcels 8 and 24 to Commercial Resource Lands 40 (CRL40), excepting the legal description of the Whistling Ridge Energy Project site boundary as provided in the Site Certification Agreement dated March 5, 2012.

Attachment 3. Page 15.

Motion seconded by _____.

AYE

NAY

Lesley Apple Haskell

John Prescott

Dee Bajema

Tony Coates

Mathew Joy

Cliff Nutting

Cyndi Soliz

Planning Commission Chair

Date

Secretary

Date

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

In the Matter of the Application No. 2009-01:
WHISTLING RIDGE ENERGY LLC:
WHISTLING RIDGE ENERGY PROJECT

WHISTLING RIDGE ENERGY LLC'S
REQUEST TO EXTEND TERM OF SITE
CERTIFICATE AGREEMENT
PURSUANT TO WAC 463-68-080

A. Introduction

The Applicant, Whistling Ridge Energy, LLC (Whistling Ridge or Applicant), requests that the Washington Energy Facility Site Evaluation Council (EFSEC or "Council") grant a three-year extension to the term of the Site Certification Agreement (effective November 18, 2013)¹ to November 2025. This request is based on the Council's discretionary authority to grant an extension pursuant to WAC 463-68-080(3).

If the Council grants this request, the Applicant will first fully review the financial and environmental feasibility of constructing the facility prior to commencing any studies. Only then would the Applicant move forward with studies, some of which are specific to certain times of the year.

As discussed below, EFSEC's rules and the terms of Site Certificate Agreement (SCA) approved by EFSEC set permissive timeframes for the commencement of construction. Whistling Ridge believes that the intent behind the permissive "shelf life" of SCAs acknowledges that EFSEC jurisdictional projects which typically fulfill important statewide policy objectives often face multi-year litigation aimed at delaying applications and undermining the commercial viability of projects through costs and delays. As is the case here, once a Site Certification Application has undergone often multi-year evaluation and scrutiny, including extensive review through Washington's State Environmental Policy Act (SEPA, RCW 43.21C), such appeals are rarely successful, but they exact a significant cost for the Applicant. Here, litigation filed by project opponents commenced with a failed appeal before the Washington Supreme Court, followed by failed litigation and appeals before the Ninth Circuit Court of appeals. The appeals were concluded in July 2018.

¹ WAC 463-64-040(3) provides that the certification agreement "shall be binding upon execution by the governor and the applicant." [Emphasis added].

B. Whistling Ridge Project History and Timeline

- 3/10/09 Application for Site Certification filed; history of adjudication can be found on EFSEC’s Project web page.
- 1/5/12 EFSEC’s Site Certificate Agreement and Recommendation submitted to Governor Gregoire.
- 3/5/12 Governor Gregoire approves the Final Order and signs the Site Certificate Agreement.
- 8/20/13 After appeal by project opponents, the Washington Supreme Court issues a unanimous decision denying appeal.
- 11/18/13 Jason Spadaro, Whistling Ridge Energy, signs the Site Certificate Agreement (“Effective Date” of Site Certificate Agreement)
- 2013-15 During this period, BPA worked on the FEIS and its Supplement to the FEIS, addressing further comments submitted post-FEIS by project opponents.
- 9/9/15 Project opponents file an appeal with the US 9th Circuit Court of Appeals, challenging BPA’s NEPA FEIS, supporting BPA’s decision to grant the Whistling Ridge Energy Project an interconnection to the Federal Columbia River Transmission System.
- 3/27/18 The 9th Circuit Court of Appeals issues a Memorandum Decision denying the appeal.
- 7/11/18 Following a petition by project opponents for a rehearing (*en banc*), the full US 9th Circuit Court of Appeals denied rehearing. This denial concluded all opposition litigation.
- 10/25/18 Whistling Ridge files and presents its “Five Year Report” to EFSEC (WAC 463-68-060), confirming the following:

Section 1: At this time, the Project is not proposing any changes as described in Section 1 of the statute.

Section 2: There is no new information or changed conditions known at this time that might indicate the existence of any probable significant adverse environmental impacts not previously addressed in the EFSEC FEIS.

Section 3: Finally, at this time, Whistling Ridge is not proposing any changes, modifications or amendments to the Site Certificate Agreement of any regulatory permits. It is possible that such changes will be proposed in the future.

- 2018 – 2021 SDS Lumber Co. (parent company to Whistling Ridge Energy LLC) undergoes protracted internal discussions among the owners, ultimately resulting in the

decision to sell SDS Lumber Co. and related entities. A sale process was begun in 2021 and in November of 2021 all company assets were sold to multiple buyers. COVID complicates efforts to proceed with Whistling Ridge Energy construction.

2021 - 2022 Twin Creeks Timber, LLC (TCT) acquired a substantial portion of the SDS timberland assets, including Whistling Ridge Energy LLC and the property on which the project would be built, in November of 2021. The assets of TCT are managed by Green Diamond Management Company, a Washington corporation and subsidiary of Green Diamond Resource Company, a fifth-generation timberland owner in the State of Washington.

C. Effective Date of Site Certificate

Whistling Ridge executed the SCA only after completion of the Supreme Court appeal, where the Court issued a unanimous decision denying the appeal. Whistling Ridge believed that it would be unjust for the Project to lose any time established in the SCA on account of what proved to be a failed appeal filed to stop the project. [*Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*](#), 178 Wn.2d 320, 310 P.3d 780 (2013). RCW 80.50.100 confirms that the SCA is binding upon execution of *both* the Governor and the Applicant:

RCW 80.50.100 Recommendations to governor—Expedited processing—Approval or rejection of certification—Reconsideration.

* * *

(3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

- (i) Approve the application and execute the draft certification agreement;
- or
- (ii) Reject the application; or
- (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant. * * *

Whistling Ridge chose to defer executing the Site Certificate Agreement until the Supreme Court appeal was resolved. The “effective date” of the Site Certification Agreement occurred at the time the two parties (the Governor and the Applicant) had executed the Site

Attachment 4. Page 4.

Certificate Agreement. The “term” for start of construction commences within ten years of the “effective date” of the Site Certificate Agreement:

WAC 463-68-030 Term for start of construction. 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.

Furthermore, the Site Certificate Agreement allows construction deadlines to be extended to such time as when “all final state and federal permits necessary to construct an operate the Project are obtained and associated appeals have been exhausted:

Site Certification Agreement, Article I.B: “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 operation the Project are obtained and associated appeals have been exhausted.” (Page 8 of 42).

As noted in the Project History summary above, opposition appeals to the Bonneville Power Administration interconnection and related NEPA process were not concluded until July 2018. In summary, it was not until 2018 that appeals of all state and federal permits were “exhausted.”

The essential reason for this latitude for construction is that *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 during litigation, where there is a risk of an appeal outcome that would require the dismantling of an operating facility and cause monumental contract breaches and power disruptions. In fact, it is unlikely that any utility or private purchaser of energy resources would even consider commitments to purchase a facility or power from an energy facility facing staunch appeal risks. It is that fundamental risk that stops projects during appeals, including appeals that have little or no merit.

D. Request to Extend Term of Site Certificate Agreement; Authority and Process

Whistling Ridge requests that the Council extend the term of the Site Certificate for a reasonable period (three years) to undertake due diligence work for the facility, and to update essential natural resource and other studies. WAC 463-68-080 confers discretion for the Council to grant this request. Whistling Ridge understands that the Council would need to conduct review of this request as an amendment to the Site Certificate Agreement, including one or more “public hearing sessions.” In seeking this request, the Applicant will utilize this time to consider commercial viability and to update environmental information and engage with stakeholders. The extension and amendment process are subject to the following Council Rules:

WAC 463-68-080 Site certification agreement expiration.

(1) If the certificate holder does not start or restart construction within ten years of the effective date of the site certification agreement, or has canceled the project, the site certification agreement shall expire.

(2) If commercial operations have not commenced within ten years of the effective date of the site certification agreement, the site certification agreement expires unless the certificate holder requests, and the council approves, an extension of the term of the site certification agreement.

(3) Upon a request to extend the term of the site certification agreement, the council may conduct a review consistent with the requirements of WAC 463-68-060 and 463-68-070, and other applicable legal requirements.

WAC 463-66-030 Request for amendment.

A request for amendment of a site certification agreement shall be made in writing by a certificate holder to the council. The council will consider the request and determine a schedule for action at the next feasible council meeting. The council may, if appropriate and required for full understanding and review of the proposal, secure the assistance of a consultant or take other action at the expense of the certificate holder. The council shall hold one or more public hearing sessions upon the request for amendment at times and places determined by the council.

WAC 463-66-040 Amendment review.

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules;
- (3) The public health, safety, and welfare; and
- (4) The provisions of chapter 463-72 WAC. [Concerns site restoration]

E. Matters to be Addressed in the Amendment to the ASC

The extension will allow Whistling Ridge Energy, through its new owner TCT, to review and if feasible to propose the installation of fewer but taller wind turbine generators and associated facilities within the designated and approved micrositing corridors. Additionally, **Attachment A** outlines what the Applicant considers to be related and necessary actions, including studies and reports needed to complete the amendment request. The Applicant would confer with EFSEC staff to ensure that all necessary information is developed. Most importantly, Whistling Ridge proposes to update natural resource studies including season-specific data (*e.g.* avian nesting surveys) and new visual simulations from key viewing areas (KVAs) within the Columbia River Gorge Scenic Area. Commencing these studies, including consultation with WDFW, local Tribes, and other agencies concerning sufficiency of information needed for updated wildlife and other surveys, will be essential.

Attachment 4. Page 6.

DATED: March 2, 2022.

STOEL RIVES LLP

A handwritten signature in blue ink, appearing to read 'T. McMahan', is written over a light blue rectangular background.

By: Timothy L. McMahan, WSBA #16377
tim.mcmahan@stoel.com

Attachment A

Likely (Tentative) Permitting Tasks and Actions Anticipated to Amend WREP Site Certificate

Action	Likely Timing (<i>tbd</i>)
Contact wildlife consultants; develop scopes of work; identify seasonally imperative work and schedule same: <ul style="list-style-type: none"> • Avian baseline updates (including passerines and bats) • Bald and Golden Eagle and other raptor nest surveys • Northern Spotted Owl survey update for confirmation • Sensitive plants. 	
Visual simulation updates; develop scope of work for modified WTGs and locations.	
Updated noise analysis.	
Develop schedule to complete all study work needed for Site Certificate Amendment Application and SEPA action.	
Agency meetings: <ul style="list-style-type: none"> • ODFW -- Confirm wildlife update work • EFSEC staff -- Discuss timing, cost, needs, process; outline amendment process, including SEPA process. Discuss and confirm mitigation parcel or alternative mitigation approaches. • USFWS -- BGEPA; NSO • DNR – Consultation as needed. • Consult with Tribal governments and representatives. 	
BPA contacts and confirmations.	
Complete all studies.	
Draft ASC Amendment; filing timing discussion with EFSEC, including evaluation of expected hearing proceedings.	
File amendment (public process begins).	
Complete all work on mitigation parcel, including agency (WDFW) concurrence; identify and address any other mitigation plans.	

Attachment 5. Page 1.



RECEIVED
SKAMANIA COUNTY

AUG 08 2022

COMMUNITY DEVELOPMENT
DEPARTMENT



Agent for
SERIES ONE OF TWIN CREEKS TIMBER LLC

1301 Fifth Avenue Suite 2700

Seattle, WA 98101

(206) 224-5800 • greendiamond.com

August 4, 2022

Community Development
170 NW Vancouver Ave.
P.O. Box 1009
Stevenson, WA 98648

To Alan Peters, Community Development Director

Dear Mr. Peters:

I am writing this letter in response to your request concerning the current status of the Whistling Ridge Energy Project (Whistling Ridge or Project). As you know, in March 2009, Whistling Ridge applied for a Site Certificate Agreement with the Washington Energy Facility Site Evaluation Council (EFSEC). On January 5, 2012, EFSEC's Site Certificate Agreement and Recommendation were submitted to Governor Gregoire, who approved the Site Certificate on March 5, 2012.

The Project permits and related authorizations were appealed through state and federal courts, with conclusion of all litigation in favor of Whistling Ridge and reviewing agencies completed on March 27, 2018. In late 2021, Twin Creeks Timber, LLC (TCT) acquired a substantial portion of the SDS timberland assets, including Whistling Ridge and the property on which the Whistling Ridge Project would be built. The assets of TCT are managed by Green Diamond Management Company, a Washington corporation and subsidiary of Green Diamond Resource Company, a fifth-generation timberland owner in the State of Washington.

At this point, Whistling Ridge is considering its options and has engaged with EFSEC staff to discuss next steps for the Project. Those discussions are underway, and EFSEC is apprised of the status.

We will keep the County informed of this process. In the meantime, we would appreciate Skamania County retaining the existing Comprehensive Plan and zoning on the site as we continue to explore options with EFSEC.

Thank you for your courtesy.

A handwritten signature in black ink, appearing to read "Jon Cole", written over a white background.

JON COLE

Area Manager, CBMA

O: 360-427-4041 | C: 541-490-5421