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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2009-01

of

WHISTLING RIDGE ENERGY PROJECT
LLC

for

WHISTLING RIDGE ENERGY PROJECT

SAVE OUR SCENIC AREA'S
RESPONDING BRIEF ON LAND USE
CONSISTENCY

(ORAL ARGUMENT REQUESTED)

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1 **I. INTRODUCTION AND BACKGROUND FACTS.**

2 In this brief, SOSA replies to the land use briefs filed by Whistling Ridge Energy
3 LLC (WRE) and Skamania County, collectively "WRE/SK". In these briefs, WRE/SK
4 claims that the WRE project is consistent with Skamania County land use plans and
5 zoning ordinances.

6 The gaping hole in the WRE/SK argument is evident to even the most casual
7 observer: neither the 2007 Comprehensive Plan nor the 2005 Zoning Ordinance approve,
8 much less mention, large wind turbine projects.¹ In fact, the 2007 Comprehensive Plan
9 designates the majority of the WR site as "Conservancy," as the name implies, a
10 designation to preserve the existing natural resources of the area, principally long term
11 forest use. Coming up empty in the adopted documents for land use consistency,
12 WRE/SK tells this Council to not even consider the County Comprehensive Plan because
13 it is a only a guide and cannot be used to review proposals such as that for the WR wind
14 turbines. Further, WRE/SK asks the Council to ignore the County's own Hearing
15 Examiner who specifically agreed with SOSA/Friends that the 2007 Comprehensive Plan
16 does not contemplate large wind turbine projects.

17 Most of the WRE/SK's claims were anticipated and thoroughly addressed in
18 SOSA's opening brief and will not be repeated here. However this brief addresses
19 several points, including the statutory responsibilities of EFSEC to review planning
20 documents under the EFSLA and the text of the Comprehensive Plan which specifically
21 sets forth its regulatory effect.

22 As with its Opening Brief, SOSA incorporates the brief filed by intervenor
23 Friends of the Columbia Gorge, which will address several issues, including the burden

24 _____
25 ¹The Council is requested to take judicial notice of the 2007 Skamania County
26 Comprehensive Plan and the 2005 Zoning Ordinance, which is codified as Title 21 in the
27 Skamania County Code.

1 of proof, conversion of forest lands, the continuing moratorium, and other issues.

2 **II. THE SKAMANIA COUNTY COMPREHENSIVE PLAN AND ZONING**
3 **ORDINANCE DO NOT PERMIT WIND TURBINES.**

4 **A. Background**

5 In their land use brief, WRE/SK argues that its wind turbine project is completely
6 consistent with the Skamania County 2007 Comprehensive Plan and its 2005 Zoning
7 Ordinance. WRE/SK also argues that the 2007 Comprehensive Plan cannot be
8 considered by EFSEC because it is only a guidance document.

9 As will be described herein, no Skamania County Comprehensive Plan or Zoning
10 Ordinance has ever listed wind turbines as an allowable use at any location in the county,
11 even though the land use ordinance has defined "wind turbines" projects since 2005.²
12 Accordingly, claims that these huge industrial machines are permitted in the Conservancy
13 designation defies logic and the plain language of the Plan. Further, WRE's demand that
14 this Council ignore provisions of the Skamania County Comprehensive Plan violates the
15 mandate given to EFSEC to determine consistency with both the local comprehensive
16 plan and the zoning ordinance.

17 Under the Energy Facilities Site Location Act (EFSLA), RCW ch. 80.50, the final
18 interpretation of county ordinances are questions of law for this Council to determine.

19 **B. Caselaw under the Planning Enabling Acts Regarding the Role of**
20 **Comprehensive Plan Is Not Applicable to EFSEC's Required Review.**

21 The principal, and extended, thrust of WRE's argument is that this Council should
22 ignore the Skamania County Comprehensive Plan. WRE Brief, 7-12. This argument is

23 ²In that same section of the 2005 zoning, "Wind Turbines" are defined as follows:
24 "Wind turbine" means a machine with turbine apparatus (rotor blades, nacelle
25 and tower) capable of producing electricity by converting the kinetic energy of
26 wind to rotational, mechanical and electrical energy; provided, the term does not
27 include electrical distribution or transmission lines, or electrical substations.

28 SCC 21.08.010.

1 based on caselaw under the planning enabling acts of the state of Washington, including
2 RCW chapters 36.70, 35.63 and 36.70A.

3 To place these relationships in proper perspective, it is necessary to understand the
4 history of land use planning in Washington. From the days of the original adoption of the
5 planning enabling acts in the sixties, state control over planning and zoning has been
6 procedural in nature. For example, RCW ch. 36.70, the County Planning Enabling Act
7 ("PEA"), provides for the adoption of comprehensive plans with limited required
8 elements. However, the job of setting standards and specific criteria is local, with the
9 state not telling counties what their plans should provide³

10 The adoption of the original EFSLA in 1970 changed that relationship only for
11 energy facilities. It was determined that there was a statewide interest in energy facilities
12 and that the state, through EFSEC and the governor, could streamline procedures and
13 reduce costs by allowing preemption of local land use plans and zoning ordinances. But
14 the legislature required EFSEC to first thoroughly consider existing local planning and
15 zoning documents. Preemption of local regulations was permitted, but only after a
16 determination was made as to whether the energy project in question was not consistent
17 or in compliance with land use plans and zoning ordinances.

18 As is seen, the authority given to EFSEC was entirely separate and independent
19 from how local jurisdictions regulated and processed land use approvals under organic
20 legislation. The Washington Supreme Court made this clear in *Residents Opposed to*
21 *Kittitas Turbines v. State Energy Facility Site Evaluation Council (EFSEC)*, 165 Wn. 2d
22 275, 197 P.3d 1153 (2008). There Kittitas County argued that GMA regulations
23 superseded EFSEC authority. However, the clear ruling of the court was that the specific

24
25 ³This changed with adoption of the Growth Management Act in 1990 when certain statewide
26 standards were adopted. However, Skamania County is not regulated by the GMA and continues
27 to operate under RCW ch. 36.70.

1 authority under the EFSEC statute controlled over the authority conferred under the
2 general planning enabling statutes:

3 Applying the general-specific rule to statutes at issue, EFSLA represents
4 the specific statute and the GMA represents the general one. EFSLA
5 governs a discrete and specific function of certifying sites for the
6 construction and operation of energy facilities. On the other hand, the
7 GMA applies to the comprehensive planning and management of land
8 within counties and cities. RCW 36.70A.040. Therefore, EFSLA can be
9 properly read as a specific exception to the general goals and procedures of
10 the GMA.

11 165 Wn.2d 275 at 309-10 (emphasis supplied).

12 The rule also applies equally to RCW ch. 36.70, the Planning Enabling Act. As
13 with GMA, EFSLA is a specific exception to the rules and procedures that may apply
14 under RCW ch. 36.70. As will be described below, EFSEC must decide whether the
15 subject project is consistent with the comprehensive plan and zoning ordinances, without
16 regard as to how the comprehensive plan or zoning ordinance are used for projects
17 subject to exclusive county control.

18 **C. The EFSLA Directs the Specific Consideration of Comprehensive**
19 **Plans Such as the 2007 Skamania County Comprehensive Plan.**

20 In adopting the EFSLA, the legislature has specifically required that EFSEC
21 determine whether a project is consistent and in compliance with local regulations:

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

RCW 80.50.090(2) (emphasis supplied). Under WAC 463-26-110:

The council shall make a determination as to whether the proposed site is
consistent and in compliance with land use plans and zoning ordinances
pursuant to RCW 80.50.090(2).

(Emphasis supplied.) Thus the consistency/compliance requirement applies to both "land

1 use plans” and “zoning ordinances.” The terms are specifically defined by EFSLA:

2 (14) "Land use plan" means a comprehensive plan or land use element
3 thereof adopted by a unit of local government pursuant to chapter 35.63,
35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter
4 325, Laws of 2007

5 22) "Zoning ordinance" means an ordinance of a unit of local government
6 regulating the use of land and adopted pursuant to chapter 35.63, 35A.63,
36.70, or 36.70A RCW or Article XI of the state Constitution, or as
otherwise designated by chapter 325, Laws of 2007.

7 RCW 80.50.020 (emphasis supplied). Thus “land use plan” under EFSLA is a
8 comprehensive plan of a county under RCW 36.70.

9 It is evident that the legislature required careful review of both comprehensive
10 plans and zoning ordinances. From this standpoint, it makes no difference how the
11 comprehensive plan or zoning ordinances are applied or interpreted by a county in
12 approving projects under its internal land use jurisdiction. Under the EFSLA, it is for
13 EFSEC to decide consistency with the local comprehensive plan and zoning ordinances.

14 Accordingly, the case law described by WRE in its brief does not apply when the
15 jurisdiction of a project is subject to EFSEC. Generally, while a comprehensive plan has
16 a lesser regulatory effect for internal county decisions, for purposes of EFSLA,
17 consistency and compliance with the comprehensive plan must be reviewed by EFSEC.
18 If the legislature had intended that EFSEC ignore comprehensive plans, or give them
19 second rate status, then it would have said so in the EFSLA statute.

20 **D. Determination of the Meaning of the Local Ordinances Rests**
21 **with EFSEC.**

22 WRE argues that the staff report of the county planning director should be given
23 great deference. Brief at 11. However, the case law is clear that interpreting or reviewing
24 the meaning of an ordinance, in this case the Skamania County Comprehensive Plan, is
25 *de novo*:

26 We review the interpretation of a city ordinance “de novo under the error
27
28

1 of law standard.” (Citations omitted) The interpretation rules apply
2 equally to municipal ordinances and statutes. (Citations omitted)

3 *Eugster v. City of Spokane*, 118 Wn.App. 383, 405, 76 P.3d 741, 754 (2003).

4 Under EFSLA, the final decision of the meaning of county ordinances is up to this
5 Council as described above. The review of the Council is *de novo*.

6 **E. Skamania County’s 2007 Comprehensive Plan Is Given Regulatory
7 Status by its Own Terms.**

8 Washington caselaw recognizes that the comprehensive plan may become a
9 regulatory tool if a local government adopts it as such. Thus in *West Main Associates v.*
10 *City of Bellevue*, 49 Wn.App. 513, 524-25, 742 P.2d 1266, 1273 (1987), the court stated:

11 Furthermore, the statutory language at issue—i.e. “the Comprehensive Plan shall
12 not be construed as a regulation of property rights or land uses”—only speaks to
13 regulatory use of a comprehensive plan which has not been separately enacted, in
14 whole or in part, as a regulation or ordinance. Therefore, since Bellevue has
15 enacted SEPA ordinances which expressly adopt the Comprehensive Plan as a
16 local SEPA policy, the council was entitled to rely on the Comprehensive Plan in
17 denying the proposal under SEPA.

18 In *West Main* the decision of the City of Bellevue to deny a proposed high rise apartment
19 project was affirmed, based in part on the application of the comprehensive plan.

20 In fact, Skamania County has adopted, in the same manner as the City of
21 Bellevue, the County’s comprehensive plan policies as a SEPA policy. Under Skamania
22 County Code (SCC) 16.04.020, SEPA Substantive Authority, the code states:

23 D. The county hereby adopts the following policies as the basis for the
24 county's exercise of authority pursuant to this section:

25
26 3. The county adopts by reference the policies in the Skamania County
27 comprehensive plan (including adopted subarea plans) and the Skamania
28 County shorelines management master program.

Similarly, in *Cingular Wireless, LLC v. Thurston County* 131 Wn. App. 756, 129
P.3d 300 (2006), Thurston County adopted general standards providing that: (1) the
proposed use “shall comply with the Thurston County Comprehensive Plan and all
applicable federal, state, regional, and Thurston County laws or plans. . .” Cingular

1 argued, as does WRE here (Brief at 9), that *Citizens for Mount Vernon v. City of Mount*
2 *Vernon*, 133 Wn. 2d 861, 947 P.2d 1208 (1997) prevented Thurston County from using
3 its comprehensive plan as a regulatory enactment. However, the *Cingular* decision
4 rejected the argument because the comprehensive plan could be enacted as a regulation if
5 the County chose to do so. *See* 131 Wn.App. at 770.

6 Here the adopted Skamania County Comprehensive Plan (2007) itself states that it
7 will be used to regulate individual projects:

8 •Page 14: “Each of the chapters (2-5) includes goals and policies that are
9 the essence of the Plan and are intended to be consulted to guide decisions
10 on a wide range of issues, including permitting and resource allocation. It
11 is important to remember that the goals and policies in the Comprehensive
12 Plan are just as important as the maps in making land use and development
13 decisions.”

14 •Page 14: “Policies are decision-oriented statements that guide the
15 legislative or administrative body while evaluation (sic) a new project or
16 proposed changes in the County ordinances.”

17 •Page 14. “Policies will be carried out through the adoption and revision
18 of development regulations and ongoing decisions on future development
19 proposals.”

20 •Page 27: “Policy L.U.2.6: Building permits, septic tank permits, or other
21 development permits issued by the County for any project shall be in
22 conformance with this Comprehensive Plan.”

23 As is made clear by the foregoing, the Comprehensive Plan itself makes clear that it is to
24 be applied in permit and development decisions. As to Policy L.U.2.6, note that the plan
25 document has changed from the identical provision in the 1977 Comprehensive Plan:

26 Building permits, septic tank permits, or other development permits issued
27 by the County for any project not in conformance with this comprehensive
28 plan should be subjected to strict review.

Exhibit 2.04c (1977 Plan), page 17. The change in comprehensive plan language
demonstrates that the 2007 Comprehensive Plan is intended to control regulatory
decisions.

The County’s comprehensive plan makes clear that individual permit decisions

1 must be in conformance with the comprehensive plan, not just the zoning ordinance.
2 Accordingly, the 2007 Comprehensive Plan became a regulatory document, under the
3 authority of *West Main* and *Cingular*.

4 **F. EFSEC Must Give Precedence to the 2007 Comprehensive Plan over**
5 **the 2005 Zoning Ordinance.**

6 Because EFSLA requires review of both the comprehensive plan and the zoning
7 ordinance, without fixing a priority between the two, EFSEC will need to determine the
8 hierarchy between the two. This is resolved in favor of the comprehensive plan for
9 several reasons.

10 First, the 2007 Comprehensive Plan was the most recently adopted and thus must
11 be given priority over the 2005 Zoning Ordinance. *Tunstall v. Bergeson*, 141 Wn.2d 201,
12 211, 5 P.3d 691 (2000) (“[T]o resolve apparent conflicts between statutes, courts
13 generally give preference to the more specific and more recently enacted statute.”). This
14 rule is especially true where the 2007 Comprehensive Plan replaced a very old (30 years)
15 and outdated comprehensive plan (1977).

16 Second, the Local Project Review Statute (RCW ch. 36.70B) makes the
17 comprehensive plan the controlling document in decision making. RCW ch. 36.70B.030
18 states:

19 (1) Fundamental land use planning choices made in adopted
20 comprehensive plans and development regulations shall serve as the
21 foundation for project review. The review of a proposed project's
22 consistency with applicable development regulations, or in the absence of
23 applicable regulations the adopted comprehensive plan, under RCW
24 36.70B.040 shall incorporate the determinations under this section.

22 (2) During project review, a local government or any subsequent
23 reviewing body shall determine whether the items listed in this subsection
24 are defined in the development regulations applicable to the proposed
25 project or, in the absence of applicable regulations the adopted
26 comprehensive plan. At a minimum, such applicable regulations or plans
27 shall be determinative of the:

28 (a) Type of land use permitted at the site, including uses that may
be allowed under certain circumstances, such as planned unit
developments and conditional and special uses, if the criteria for their

1 approval have been satisfied;
2 (Emphasis supplied). As noted, the comprehensive plan is used to determine the “type of
3 land use permitted at the site” in the “absence of applicable regulations.” *Id.*

4 Except for a portion of the south end of the project, the proposed project site is in
5 the “Unmapped” area not regulated by the zoning ordinance, as SCC 21.64.020 states:

6 The standards, provisions, and conditions of this title shall not apply to
7 unmapped areas.

8 The County, in its brief, admits that: “15,000 acres within the County is unzoned and
9 subject to a County-wide moratorium.” Brief at 5 (emphasis supplied). This language is
10 taken verbatim from the County-wide moratorium, which states: “there are over 15,000
11 acres of private land within unincorporated Skamania County that do not have zoning
12 classifications.” Exhibit 1.15c, p. 1. Thus most of the WR project is within this unzoned
13 land. Skamania County effectively recognized that it would not tolerate the absence of
14 any zoning on the “unzoned lands ” when it adopted the moratorium on these lands the
15 very day (July 10, 2007) it enacted the 2007 Comprehensive Plan. *See* Exhibit 1.15c.
16 That moratorium referenced GMA requirements to “provide protections for commercial
17 forest land. . . .” and continues to this day. *See Id.* (Skamania County Ordinance 2010-10,
18 adopted November 10, 2010 and effective for six months). Thus there is effectively no
19 zoning on these unzoned lands until the moratorium ends and a compliant zoning
20 ordinance is adopted.

21 Because of the absence of zoning regulations under RCW 36.70B.030, the 2007
22 Comprehensive Plan becomes the regulatory document.

23 Third, under the terms of the PEA, the zoning ordinance cannot be inconsistent
24 with the comprehensive plan. *See* RCW 36.70.545 (a county zoning ordinance or
25 development regulations “shall not be inconsistent with the county’s comprehensive
26 plan”). The inconsistencies between the plan and ordinance were described on pages 4-

1 11 of SOSA's opening brief and will not be repeated here.

2 Fourth, the comprehensive plan fulfills the only GMA provision applicable to
3 non GMA counties by designating the natural resource lands, as is explained in the next
4 section of this brief.⁴

5 **III. THE PROPOSAL IS INCONSISTENT WITH THE COMPREHENSIVE
6 PLAN AND ZONING ORDINANCE.**

7 As noted in SOSA's opening brief, the 2007 Skamania County Comprehensive
8 Plan places the property in question in the "Conservancy" zone. Under the Conservancy
9 Zone, no large-scale industrial activities with impacts even close to those of huge wind
10 turbines are permitted in any manner.

11 Further, the 2007 Comprehensive Plan states (at page 9) that it is intended to
12 comply with the terms of those limited GMA requirements that apply to Skamania
13 County. The GMA, RCW 36.70A.060, requires all counties "to assure the conservation
14 of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170."
15 This requirement was reflected in the Conservancy designation in the 2007
16 Comprehensive Plan:

17 Conservancy areas are intended to conserve and manage existing natural
18 resources in order to maintain a sustained resource yield and/or utilization.

19 *See* page 25. The continuous moratoria approved after the adoption of the 2007

20 ⁴In fact, even if the 2005 zoning ordinance is applied in the "Unmapped Area" the applicant's
21 proposal would not be permitted. That section only allows uses "which have not been declared a
22 nuisance by . . . a court of jurisdiction." SCC 21.64.020. This means a proposed large-scale
23 energy facility on unzoned lands could be prohibited as an unreasonable interference with public
24 or private rights. This is a very real possibility, because courts in other jurisdictions have ruled
25 that energy facilities—including wind energy facilities—can be nuisances, considering their
26 noise; unsightliness; and effects on human health, safety, and property values. *See, e.g., Burch v.*
Nedpower Mt. Storm, LLC, 220 W. Va. 443, 647 S.E.2d 879, 893 (2007) (landowners' allegations
regarding approved wind energy facility were legally sufficient to state claims that the facility
constituted a private nuisance and should be prospectively enjoined); *Rose v. Chaikin*, 187 N.J.
Super. 210, 453 A.2d 1378 (1982) (60-foot-tall wind turbine constructed in residential
neighborhood constituted a nuisance).

1 Comprehensive Plan acknowledge the county's forest protection responsibility:

2 the Growth Management Act requires all counties in the state of
3 Washington to provide protections for commercial forest land from the
4 encroachment of residential uses.

5 Exhibit 1.15c. Thus the Conservancy designation under the 2007 Comprehensive Plan
6 fulfilled a statutory mandate to conserve forest lands, which would be violated by the
7 WRE huge wind turbines, electrical substation, roads and other activities.

8 Next WRE attempts to say that its industrial wind turbine project is a use that is
9 permitted in the existing "Forest/Agricultural-20" zone as a conditional use. This is so,
10 WRE claims, because the wind turbine project should be considered a "semi-public
11 facility and utility" which are listed as conditional uses in this zone, though they are not
12 defined in the 2005 zoning ordinance. Similarly, Skamania County argues in its brief that
13 there are a "variety of uses" that are authorized as conditional uses, such as geothermal
14 energy facilities and sawmills and thus: "The Project comes within the scope of this list
15 of uses." County brief at 3. This strained interpretation fails for the simple reason that
16 "wind turbines" are a defined use in the 2005 Zoning Ordinance. *See* 21.08.010. This
17 definition (set forth in full at page 6 of SOSA's Opening Brief) was added to the zoning
18 ordinance in the 2005 amendments. If "wind turbines" were intended by the code to be a
19 permitted or conditional use in the "Forest/Agricultural-20" zone, or any other zone, they
20 would be specifically listed as such, much as another renewable energy use, "geothermal
21 energy facilities," is listed.

22 The arguments of Skamania County and WRE fail for a very basic reason: neither
23 the 2005 Zoning Ordinance nor the 2007 Comprehensive Plan make wind turbines a
24 permitted, conditional, and/or review use.
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1 **IV. THE PRIOR RULING OF THE SKAMANIA COUNTY HEARING**
2 **EXAMINER THAT LARGE WIND TURBINE FACILITIES ARE NOT**
3 **CONTEMPLATED BY THE 2007 COMPREHENSIVE PLAN BINDS**
4 **THE COUNTY.**

5 In our opening brief, SOSA demonstrated that the 2009 decision of the Skamania
6 County Hearing Examiner resolved the issue of whether the 2007 Comprehensive Plan
7 actually contemplated the large scale wind turbine facilities. As noted at page 16-17 of
8 SOSA's brief, the Hearing Examiner held that wind turbines were "not contemplated" in
9 the 2007 Comprehensive Plan. The Hearing Examiner also concluded that:

10 Some of the alternative energy uses are not identified in the Comprehensive
11 Plan or the existing zoning code.

12 Conclusion 2.A, page 27, Exhibit 1.17c. The Hearing Examiner was correct: the
13 Comprehensive Plan did not mention wind turbines or wind energy at all. In the 2005
14 Zoning Ordinance, though "wind turbines" were a defined use (SCC 21.08.010; *see* page
15 6 of SOSA's principal brief on Land Use Consistency), they were not listed as a use of
16 any kind in any zone.

17 WRE claims that *res judicata* or other claim preclusion does not apply here; they
18 are incorrect. The issue of consistency of large wind turbines with the Comprehensive
19 Plan was litigated between SOSA and the County before the Hearing Examiner. Now the
20 same county planning director who lost the issue before the Hearing Examiner reprises
21 the same issue in the county's land use consistency claim.

22 The whole purpose of *res judicata* doctrine is to prevent inconsistent rulings by
23 preventing a party to a final judgment from raising the same claim in a subsequent
24 dispute. It is well established in Washington state law that *res judicata* applies to
25 quasi-judicial land use decisions. *DeTray v. City of Olympia*, 121 Wn. App. 777, 785, 90
26 P.3d 1116 (2004) ("To prevent repetitious litigation and to provide binding answers, the
27 *res judicata* doctrine bars reasserting the same claim in a subsequent land use
28

1 application” and “[t]he most purely public purpose served by *res judicata* lies in the
2 acceptability of judicial dispute resolution against the corrosive disrespect that would
3 follow if the same matter were twice litigated to inconsistent results.”) (citing *Hilltop*
4 *Homeowner’s Ass’n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

5 SOSA and the County litigated the question of consistency of the 2007
6 Comprehensive Plan with large wind turbine facilities, even with reference to the very
7 project now presented to this Council. Exhibit 1.15c, page 13, Finding 8 (“SDS has
8 approached Skamania County on multiple occasions over the past several years to discuss
9 a possible large-scale wind energy project (Saddleback Project) on its property within the
10 County.”) The issue has been decided and resolved.

11 Finally, through the adjudicative principle *stare decisis*, EFSEC is bound by the
12 precedent set by the Hearing Examiner’s decision. *Stare decisis* requires that tribunals
13 interpret laws consistently across cases and adhere to legal precedent set in prior cases.
14 As explained above, the legal question of what uses are allowed under the
15 Comprehensive Plan has been conclusively resolved. EFSEC should not deviate from the
16 legal precedent set by the Hearing Examiner’s decision.

17 V. CONCLUSION

18 The large wind turbine project proposed by WRE is neither consistent with nor in
19 compliance with the 2007 Comprehensive Plan and the 2005 Zoning Ordinance. Neither
20 document even hints that industrial scale wind turbines are allowed at the project site.
21 Rather the Comprehensive Plan makes clear that the site is to be preserved, as required by
22 the GMA, for long term forest production.

