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January 15, 2011

Jim Luce  
Chairman  
Energy Facility Site Evaluation Council  
P.O. Box 43172  
Olympia WA 98504-3172

RE: Whistling Ridge Energy Project, EFSEC Application No. 2009-01

Dear Chairman Luce and Council Members:

I am writing this letter to comment on an application you presently are considering, and more particularly on the representations made by one of the parties in the proceeding regarding the effect on the application of the Columbia River Gorge National Scenic Area Act. I represented the State of Washington in the United States Senate in the 1980s, during Congressional consideration of the National Scenic Area Act. Together with my colleague Slade Gorton and Senators Hatfield and Packwood of Oregon I was a cosponsor of the authorizing legislation that established the National Scenic Area.

On February 6, 1986, the four Northwest Senators introduced S. 2055, a bill to establish the Columbia Gorge National Scenic Area. The legislation represented a balance between efforts to protect the scenic and natural resources of the Gorge and maintaining the historic economies of the area. We recognized the Columbia Gorge's economy was dependent on maintaining the viability of working forests, extractive resources and one of the region's critical transportation and energy transmission corridors. The legislation was developed in order to protect the Gorge from uncontrolled development, but also protect the historic way of life of the Oregonians and Washingtonians that live in that area.

A key feature of the S. 2055 was the so-called buffer zone language. Specifically, section 17(g) of the bill as introduced read as follows:

Congress does not intend that establishment of the Scenic Area and designation of Special Management Areas lead to the creation of protective perimeters or buffer areas around the Scenic Area or each Special Management Area. The fact that activities or uses inconsistent with the management directives for the Scenic Area or Special Management Areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the Scenic Area or Special Management Areas.<sup>1</sup>

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<sup>1</sup> Section 17, Senate Bill 2055, 99<sup>th</sup> Cong., 2d Sess., (1986), *introduced at* 132 CONG. REC. S1146 (daily ed. Feb. 6, 1986).

As introduced, this provision of the bill nearly was identical to a provision in the Washington Wilderness Act, which I also co-sponsored and which was passed by Congress shortly before we began work to draft S. 2055. At the time, the issue of buffer zones around congressionally-protected areas was of great concern to the members of the Senate Energy and Natural Resources Committee. In 1982, the Ninth Circuit Court of Appeals decided California v. Block, 690 F. 2d 753 (9th Cir. 1982), in which the Court affirmed a lower court injunction against any development that would "change the wilderness character" of any lands adjacent to congressionally-designated wilderness areas until subsequent consideration of the wilderness values of such land in accordance with the National Environmental Policy Act. The Ninth Circuit's Block decision was mentioned repeatedly in the Energy and Natural Resources Committee's report on the Washington Wilderness Act. The Committee included the buffer zone language and so-called release language to insure against the following scenario:

In short, this language means that the Forest Service cannot be *forced* by any individual or group through a lawsuit, administrative appeal, or otherwise to manage lands not recommended for wilderness designation in a "de facto" wilderness manner.<sup>2</sup>

On June 17, 1986, the Senate Energy and Natural Resources Committee conducted a legislative hearing on S. 2055. Brian Boyle, who at the time was serving as Washington State Commissioner of Public lands, testified at the hearing. Commissioner Boyle supported language in the bill clarifying the buffer zones are not created or implied around special management areas, and urged the committee to strengthen the so-called buffer zone language in the bill.<sup>3</sup> Conversely, conservation organizations – specifically the Friends of the Columbia Gorge -- recommended that the buffer zone language be deleted altogether.

On August 4, 1986, we presented amendments to S. 2055, including the removal of "intent" addressing buffer zones, in the Congressional Record.<sup>4</sup> On August 14, 1986, the Senate Energy and Natural Resources committee voted to report S. 2055 to the full Senate for consideration. Nevertheless, we continued to negotiate changes to the bill and the Committee voted to accept a substitute amendment, and 56 "technical amendments." The Committee meeting was contentious and both Committee Chairman James McClure and Subcommittee Chairmen Malcolm Wallop opposed the legislation. The Committee did not file a Committee Report to accompany the bill in large part because of their opposition.

On October 8, 1986, the United States Senate took up consideration of S. 2055. Negotiations had continued since Energy and Natural Resources Committee consideration of the legislation, and numerous changes had been made to the draft legislation. Senator Hatfield, who was the senior member of the Oregon and Washington congressional delegations, was the floor manager for the bill. Senator Hatfield offered a substitute amendment to the bill, which Senator McClure and I cosponsored. As

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<sup>2</sup> S. 837, Senate Committee Report 98-461, at p. 20. 99<sup>th</sup> Cong., 1st Sess. (1984).

<sup>3</sup> *Columbia Gorge Nat'l Scenic Area Act: Hearing on S. 2055 Before the Subcomm. on Public Lands, Reserved Water and Resource Conservation*, 99<sup>th</sup> Cong., 2d Sess. 68 (1986).

<sup>4</sup> Amendment to S. 2055, 99<sup>th</sup> Cong., 2d Sess., 132 Cong. Rec. S15, 705-13 (1986), § 17.

recommended by Lands Commissioner Boyle, the so-called "floor substitute" amendment contained savings provisions that were substantially strengthened from earlier versions of the bill, including a provision that read in pertinent part as follows:

(a) Nothing in this Act shall --

...

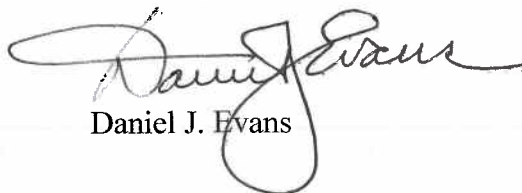
(10) establish protective perimeters or buffer zones around the Scenic Area or each Special Management Area. The fact that activities or uses inconsistent with the management directives for the Scenic Area or Special Management Areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the Scenic Area or Special Management Areas.<sup>5</sup>

The Senate passed S. 2055 on a voice vote, thus sending the bill to the House of Representatives for its consideration. The House of Representatives took up consideration of the Senate-passed legislation. It was not uncommon, however, for the House of Representatives to pass legislation such as this with a House bill number, which it did. Thus S. 2055 became H.R. 5583. The House version of the bill contained several modifications which its sponsors referred to as "technical amendments." Significantly, at no time did the House of Representatives change the so-called buffer zone language. The House passed H.R. 5583 on October 16, 1986. The bill had been referred jointly to the House Agriculture Committee and the House Committee on Interior and Insular Affairs. Neither committee published a Committee Report on the legislation. The Senate concurred with the House amendments on October 17, 1986. President Reagan signed the bill into law on November 17, 1986.

The members of the Oregon and Washington congressional delegations worked long and hard to enact legislation establishing the Columbia River Gorge National Scenic Area. The Scenic Area is an outstanding contribution to the legacy we are leaving to future generations. But it has boundaries, which represent limits to the area we sought to protect. The EFSEC should respect these boundaries, and should not attempt to apply the Scenic Area's proscriptions indirectly through the application of Scenic Area visual management criteria to projects outside the Scenic Area. The EFSEC's responsibility under the State Environmental Policy Act is to consider the environmental impacts of a project. In my view, this responsibility means no more – or less – because of the existence of the Columbia River Gorge National Scenic Area.

Thank you for your consideration of my comments on this application.

Sincerely,



Daniel J. Evans

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<sup>5</sup> Section 17, Act of November 17, 1986, Public Law 99-663, 100 Stat. 4300, codified at 16 U.S.C. 544o.