

FRIENDS OF THE COLUMBIA GORGE

WHISTLING RIDGE ENERGY LLC
K. SHAWN SMALLWOOD
OCT. 22, 2008 FOCG COMMENT LETTER
EXHIBIT NO. 22.10C

October 22, 2008

Skamania County Board of County Commissioners
P.O. Box 790
Stevenson, WA 98648-0790

RECEIVED
SKAMANIA COUNTY

DEC - 9 2008

Re: Skamania County Proposed Zoning Amendments

COMMUNITY DEVELOPMENT
DEPARTMENT

Dear Commissioners:

Friends of the Columbia Gorge would like to comment on the proposed amendments to Skamania County's zoning text and maps. Friends is a non-profit organization with more than 5,000 members, many of whom reside in Skamania County, dedicated to protecting and enhancing the resources of the Columbia River Gorge.

The proposed changes are substantial in nature and, if adopted, would cause a significant impact to the environment that requires an Environmental Impact Statement (EIS). To ensure that an EIS is prepared, Friends has appealed the County's SEPA Determination of Non-Significance. Without analysis of the likely environmental impacts of the proposed amendments, the County risks creating rules that will lead to unintended adverse impacts to the local community. Only with an EIS can the County ensure that all impacts are known and that the benefits of the proposed zoning amendments will outweigh the potential harm.

Friends hereby incorporates by reference all of our previous written and oral submissions to the County Commission, Planning Commission, Planning Department, and Hearing Examiner regarding County Ordinance No. 2008-11, County Resolution No. 2008-52, and County File Nos. SEP-08-14 and SEP-08-35.

As Friends has previously stated, the County Commission should not review the proposed amendments until the Hearing Examiner issues a SEPA decision. The County must ensure that it has performed a thorough and legally sufficient analysis of the potential environmental consequences of the proposed action first, and this analysis must be used when the County considers various alternatives.

In addition, the formatting of the draft proposed ordinance available on the County Commission's web site makes this document extremely misleading. Although red font, underlines, and strike-throughs are used to indicate proposed changes, *the only changes that are*

noted are the differences between the County Commission initiated draft and the Planning Commission recommended changes. The draft ordinance does not in any way show changes originally recommended by the County Commission that the Planning Commission agreed with. As a result, when looking at language that is not in red, underlined, or struck through, it is impossible to know whether that language is currently in the existing code or is new language recommended by both the County Commission and Planning Commission. For example, many of the wind energy standards are shown in black and without any underlining, which to the casual reader makes it appear as if this language is already in the code.

The County should remedy this significant defect by preparing a new draft that uses red font for *all* proposed changes, a single underline for all language proposed by the County Commission and agreed to the Planning Commission, and a double underline for all changes recommended only by the Planning Commission. Failure to make these changes is misleading and frustrates the participation of the many interested citizens who wish to comment on all proposed changes—not just differences between the County Commission’s draft and the Planning Commission’s draft.

Given the fact that October 30 will be well before the Hearing Examiner reaches a SEPA decision, and the fact that the County has not made a copy of the ordinance that shows all proposed changes, Friends objects to the County Commission’s choice to hold a public hearing on the merits of the proposed language on October 30. The County Commission should cancel the October 30 hearing.

In the event that the County Commission proceeds with the October 30 hearing, Friends suggests the following modifications to the draft language. These changes would resolve many of our concerns with the draft language, while still allowing for future energy, industrial, and commercial development in Skamania County.

1. Change “Allowable Uses” to “Uses Allowed Outright.”

The term “Allowable Uses” should be changed to “Uses Allowed Outright.” The term “Allowable Uses” is a misnomer, because the draft ordinance would make these uses *allowed*, not *allowable*. According to the draft ordinance, such uses are “allowed outright [without the] Planning Director’s review and approval.” Draft Ord. § 21.08.010(99).

2. Provide explicit authority to deny proposed conditional uses that would be incompatible with other uses in the area.

The proposed zoning ordinance is inconsistent with the Comprehensive Plan’s framework for conditional use review. The Comprehensive Plan explicitly states that the Hearing Examiner shall have authority to deny proposed conditional uses that are not compatible with the surrounding area. Comp. Plan Policy LU.6.1.c. In contrast, if a proposed use would not be compatible, the zoning ordinance provides only two options for the Hearing Examiner: (1) approve the use or (2) approve the use with conditions. *See* Draft Ord. § 21.16.070(A). The first option (approve the use) should be replaced with language authorizing the Hearing Examiner to

deny the use. Failure to make this correction would violate the consistency rule mandated by the Planning Enabling Act. *See* RCW 36.70.545.

3. Several categories of uses should not be allowed outright.

The draft ordinance would allow multiple new uses outright in multiple zones, which would result in inconsistencies with the goals and policies of the Comprehensive Plan; fail to protect neighboring property owners and surrounding communities; adversely affect water quality and quantity, air quality, scenery, recreation, cultural resources, and quality of life; and eliminate the public's right to participate in the development review process.

The following uses should be Administrative Review Uses or Conditional Uses in all zones where they are authorized:

- Storage of explosives, fuels, and chemicals
- Public, semi-public and/or private facilities and/or utility systems¹
- Manufacturing and/or processing facilities
- Manufacturing uses
- Light industrial²
- Warehousing
- Wholesale distribution facilities
- Small-scale wind energy facilities
- Small-scale solar energy systems
- Rooftop wind turbines
- Log sorting and storage areas, scaling stations, and forest industry storage and maintenance facilities
- Sawmills, shake and shingle mills, and chipper facilities
- Extraction of gravel and rock for road and trail construction and maintenance purposes
- Operation of portable rock crushers
- Overnight lodging and convention facilities
- On-site hazardous waste treatment and storage facilities³

¹ The current ordinance allows “public water facilities and utility systems” and “public, semi-public and/or private water facilities and/or utility systems” as allowable uses in certain zones. The Planning Commission proposes to remove the word “water” from all occurrences of these terms and to add “electrical transmission, distribution and generation facilities” and “natural gas systems” to the definitions of “Public Facilities and Utility Systems” and “Semi-Public Facilities and Utility Systems,” among other changes. These proposed changes should be rejected. Among other problems, electrical transmission, distribution, and/or generation facilities, as well as natural gas systems, should not be allowed outright in any zone.

² In the Business Park designation, at section 21.49.020(B), the term “Light industrial” is allowed outright, but that term is never defined in the ordinance. This term needs to be defined.

³ At the Planning Commission level, there was much discussion about a desire to require permits for larger on-site hazardous waste treatment and storage facilities, but to exempt smaller facilities such as auto repair shops that store oil and other automotive fluids, and schools that store paints. Because much of the discussion occurred during deliberations, there was no opportunity for the public to provide

4. Narrow the geographic scope of the proposed Commercial Resource lands.

The draft ordinance would zone approximately 86% of non-Scenic Area lands as Commercial Resource. The Commercial Resource zoning should not cover such a huge portion of the County. Sensitive areas should be avoided. These include Critical Areas, National Forests, ridgelines, migratory bird flyways, western gray squirrel habitat, and the Pacific Crest National Scenic Trail corridor. The County should also designate sensitive areas within the Natural Zone Classification.

5. Either remove bio-energy uses from the ordinance or expressly exclude combustion or burning of biomass from the definition of “bio-energy.”

It is Friends’ understanding that the County intends for bio-energy facilities to encompass only the creation of new fuels from biomass products, rather than facilities that would create air pollution by burning wood products (*e.g.*, hog boilers). The County should either remove bio-energy uses from the ordinance (as Klickitat County did prior to finalizing its Energy Overlay Zone) or should revise the definition of “bio-energy” to expressly exclude the combustion or burning of biomass.

6. Require the protection of air and water resources.

The draft zoning ordinance fails to require the protection of air resources such as air quality and visibility, and water resources such as water quality, water quantity, and other water resources. These resources must be protected.

The final ordinance should expressly require all new industrial, energy, and commercial uses to protect water resources such as water quality, functions, and quantity. Although the draft ordinance would require applicants for wind energy facilities to take “[r]easonable efforts . . . to protect and to preserve existing . . . water resources,” the term “reasonable efforts” is not defined, and this language would not apply to geothermal, bioenergy, or other uses likely to adversely affect water resources.

Similarly, final ordinance should expressly require all new industrial, energy, and commercial uses to protect air resources. While the draft ordinance would require certain energy facilities to obtain “[a]ll applicable air emission permits,” this language should be supplemented by a requirement for the applicant to prove that existing air resources will be protected, and a requirement for the County to make findings on whether that standard will be achieved. Moreover, the requirement to obtain applicable air emission permits would not apply to multiple industrial, commercial, and other uses authorized by the ordinance.

///

testimony. Friends believes that the County should require a conditional use permit for hazardous waste treatment and storage facilities, and that such a requirement would not apply to smaller facilities such as auto repair shops. This is because the ordinance cross-references RCW 70.105.210, which is implemented by WAC Title 173, Chapter 303, and WAC 173-303-070(8) exempts “small quantity generators.”

7. Improve and clarify the proposed standards for Alternative Energy Systems.

The proposed standards for Alternative Energy Systems (section 21.70.170) should be modified to ensure that adverse resource impacts are avoided. For example, the following changes should be made with regard to wind systems and facilities:

Procedural Standards

- Applicants for large-scale wind energy facilities should be required to describe the proposal and its impacts. For example, Klickitat County's energy overlay zone ordinance requires all applicants to provide "information on the maximum megawatts of the project, the total square footage of buildings to be constructed, the maximum height and number of wind turbines and solar panels (if applicable), expected noise generation levels, the length of new roads and power lines, and transportation impacts." The proposed ordinance would require applicants to provide a transportation plan and "documentation of expected noise generation levels," but would not require many of the other project details required in Klickitat County.
- Provide criteria under which all required materials for large-scale wind energy facilities will be evaluated.
- For large-scale wind energy facilities, require consultation with the U.S. Forest Service and Columbia River Gorge Commission regarding potential resource impacts.

Scenic Resources

- Require applications for large-scale wind energy facilities to include visual simulations of the project as viewed from public vantage points.
- Include criteria similar to Oregon's statewide standards that require the design, construction and operation of large-scale wind energy facilities to not result in significant adverse impact to significant scenic resources and values. *See* OAR 345-022-0080.
- Prohibit large-scale wind turbines near the Columbia River Gorge National Scenic Area.

Wildlife Resources

- Require one full year of avian and bat use surveys for *all* large-scale wind facilities, rather than one full season for many cases.
- Add requirements for protection of bats. Currently, the only reference to bats in the entire ordinance is the requirement to monitor bat injuries and casualties *after* the project is approved and implemented.
- For large-scale wind facilities, require mitigation measures in the event that post-construction monitoring demonstrates high mortality levels of birds or bats.
- *Require* consultation with WDFW and USFWS regarding potential impacts to wildlife resources, rather than just *advising* such consultation.
- Require projects to be consistent with the WDFW Wind Power Guidelines.

Recreational Resources

- For large-scale wind energy facilities, require consideration and avoidance of adverse impacts to recreational resources.

Standards to Protect Surrounding Community

- For large-scale wind energy facilities, require site-specific impact analysis and rules that protect the community from the adverse effects of noise, shadow flicker, lighting, ice throw, thrown or wind-blown pieces of turbines, interference with communications devices, and other factors.

Stormwater management and erosion control

- Require applicants for large-scale wind energy facilities to submit a grading and stormwater management plan prepared by a professional engineer that complies with state best management practices and stormwater quality standards.
- Require erosion control plans to be prepared by a professional engineer.
- Require erosion control plans to ensure that minimal erosion will occur.

8. Require a size limitation for replacement of existing cabins and construction of new cabins at Northwestern Lake.

The draft ordinance would allow *outright* the replacement of existing cabins and the construction of new cabins at Northwestern Lake. The ordinance should include a size limitation to ensure that the buildings constructed will actually be cabins, rather than “trophy homes” or “McMansions.” Including a size limitation would be consistent with the desires of the Planning Commission and the owners of the existing cabins at Northwestern Lake.

9. Fix grammatical and typographical errors.

Friends has noticed a number of grammatical and typographical errors in the Planning Commission’s recommendation. These should be corrected.

For instance, the word “amended” should be removed from the following definition of “Hazardous Waste Treatment And Storage Facility, On-Site”: “These *amended* treatment and storage facilities treat and store wastes generated on the same geographically contiguous, or bordering property.”

In the definition of “Small-scale Wind Energy Facilities,” the word “to” should be changed to “by”: “Wind turbines which will be used primarily to reduce on-site consumption of utility power *to* farms, homes, or businesses.”

Section 21.07.030(B)(3) cross-references section 21.70.030(D)(6), which doesn’t exist.

Section 21.07.030(A)(1) refers to “16 USC 470 hh.” This citation should be corrected to remove the space in the section number, making it “16 USC 470hh.”

Section 21.70.170(E)(3)(b) refers to a setback of “fifty (5) feet.” It is not clear whether fifty feet or 5 feet is intended.

///

10. Conclusion

Friends of the Columbia Gorge strongly encourages the County Commission to cancel the October 30 hearing, to prepare a new version of the ordinance that clearly shows all language that would be changed from existing law, and to allow the SEPA process to run its full and proper course prior to County Commission consideration of the proposed language.

In the event that the County Commission proceeds with review, it should implement all of the recommendations discussed above.

We would be happy to provide additional information on any of the issues discussed in this letter. Thank you for the opportunity to provide comments on this important matter.

Sincerely,



Nathan Baker
Staff Attorney

cc (via e-mail only): Rick Poulin, SCOPE Law Firm
Peter Banks, County Prosecutor
Karen Witherspoon, County Planning Director