FRIENDS OF THE COLUMBIA GORGE

WHISTLING RIDGE ENERGY LLC
MICHAEL LANG
JAN. 22, 2010 FOCG COMMENT LETTER
EXHIBIT NO. 25.01C

SUBMITTED VIA E-MAIL AND FIRST-CLASS MAIL

January 22, 2010

Curt Dreyer, Director
Klickitat County Planning Department
228 W. Main, MS: CH-17
Goldendale, WA 98620

Re: Klickitat County's proposed revisions to the Energy Overlay Zone

Dear Mr. Dreyer:

Friends of the Columbia Gorge has reviewed and would like to comment on the above-referenced matter. Friends is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside in the six counties within the Columbia River Gorge National Scenic Area.

The environmental impacts of the continued development under the Energy Overlay Zone (EOZ) ordinance, including the proposed revisions, would likely be significant and warrant preparation of an Environmental Impact Statement (EIS). The need for a new EIS is underscored by the fact that the original EOZ EIS has expired and is no longer valid. The County must prepare an EIS that incorporates information gained through the five years of development that has occurred under the existing EOZ ordinance.

An EIS will help the County adopt guidelines that both improve the permitting process while also ensuring that adverse impacts of energy development are avoided and that unavoidable impacts are fully mitigated.

Alternatively, the County could adopt additional development standards that would reduce the likely impacts below the level of significance and issue a Mitigated Determination of Non-Significance. To do this, the County would need to adopt improved standards for preventing impacts to visual, cultural, and natural resources.

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Pursuant to the 2005 EOZ EIS Settlement Agreement the County is required to reevalutate the entire EOZ ordinance and Comprehensive Plan policies.

In 2005 Klickitat County entered into a settlement agreement with multiple appellants of the original EOZ EIS. *See attached* 2005 Settlement Agreement. A key provision of the 2005 Settlement Agreement required that the County take specific actions when 1,000 megawatts of wind energy development was constructed. Upon reaching that threshold the Klickitat County Planning Commission and the Klickitat County Board of County Commissioners are required to hold public hearings "to reevaluate the energy overlay zone and take public comment on the energy overlay development regulations and comprehensive plan policies. 2005 Settlement Agreement at Sect. 3.2(c).

The County has issued building permits for over 1,000 megawatts of wind energy development and the above-referenced settlement obligation has been triggered. The Planning Commission public hearing scheduled for February 16, 2010 will not satisfy the County's obligations under the 2005 Settlement Agreement. The public hearing was noticed only to provide the opportunity to comment on the proposed revisions to the EOZ, which would "clarify project review and mitigation requirements." The scope of the public hearing is too narrow.

The County must renotice the Planning Commission hearing and clarify that it will be reevaluating the EOZ and taking public testimony on the EOZ regulations and Comprehensive Plan policies. Part of that reevaluation can be consideration of the proposed revisions.

The County must prepare a new Environmental Impact Statement

Energy development within Klickitat County has greatly exceeded the scope and rate of development anticipated in the original EOZ EIS. The EOZ EIS studied the potential environmental impacts of four wind projects with a total capacity of 1,000 MW over a twenty-year period. EOZ EIS at 1-2. Over the last five years building permits have been issued for over 1,000 megawatts of wind energy development within the county and another 800 megawatts have been permitted. Thus, the original EOZ EIS has expired and is no longer valid. Because development has far exceeded the scope anticipated in the EOZ EIS, preparation of a new EIS is warranted.

Preparation of a new EIS, as required by SEPA, would beneficially inform the County's revision process. Preparation of a new EIS would afford the opportunity to review the effectiveness of wildlife protection provisions and, if necessary, develop alternatives that would effectively prevent unnecessary impacts to wildlife. For example, the existing development standards require that mitigation condition be based on the "Mitigation Summary" in the EOZ EIS. See Draft EOZ Ord. Revisions at 12.[1] Since the EOZ EIS is out of date, it is inappropriate to base mitigation measures off that document. If the referenced mitigation standard is retained, the EOZ EIS must be updated.

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[1] The mitigation standards do not have a section letter or number. Instead, the standard is left untitled at the end of Section 19.39:9(B). The County should provide a specific subsection heading for the mitigation standards.

Preparation of the original EOZ EIS did not include consultation with the Columbia River Gorge Commission, the National Scenic Area office of the U.S. Forest Service, the National Park Service, the Washington State Parks and Recreation Commission, or the U.S. Fish and Wildlife Service. EOZ EIS at 4-1. The County should consult with and obtain comments from these agencies because they have jurisdiction or expertise regarding the impacted environment. RCW 43.21C.030(2)(d). Consultation with these agencies would likely improve the EOZ ordinance and lend substantial credibility to the EOZ development standards.

Additional review of impacts to scenic resources is also warranted. The EOZ EIS states that the subjective opinions of the general public vary with respect to the scenic impacts of wind energy development. EOZ EIS at 3-110. This finding runs contrary to the best available science on the management of scenic landscapes. There are several objective aesthetic impacts analysis methodologies that could serve as a basis of evaluating the likely impacts of wind energy development throughout the County. This includes the Forest Service's Scenery Management System, which is the Forest Service's standardized methodology for measuring impacts to aesthetic resources. *See* "Landscape Aesthetics: A Handbook for Scenery Management," (Agriculture Handbook No. 701, Dec. 1995). The EOZ ordinance would be beneficially informed by impacts analysis based on this information.

In addition, the National Academy of Sciences recently published a document entitled Environmental Impacts of Wind-Energy Projects (National Academies Press, 2007), which reviews a wide range of potential environmental impacts from wind energy development. This new information should be used to inform the County's consideration of potential revisions to the ordinance.

The County must undertake cumulative effects analysis through the SEPA process.

Under SEPA, the lead agency is specifically required to consider whether several marginal impacts when considered together may cumulatively result in a significant adverse impact. WAC 197-11-792(2)(c)(iii). The need for cumulative impacts analysis is evidenced by the unprecedented rate that wind energy development has occurred within Klickitat County and within the Columbia Plateau in Washington and Oregon. The original EOZ EIS assumed four wind facilities and 1,000 megawatts of wind energy development would occur over a twenty year period. In five years Klickitat County has permitted almost double the anticipated development in a quarter of the time. Given the scale of development occurring, it is critical that the County undertake cumulative impacts analysis through an EIS.

The County commissioned West Ecosystems Technology, Inc. to prepare cumulative impacts analysis of wind energy development in the Columbia Plateau ecoregion.[2] However, this analysis was not part of an EIS specifically reviewing the likely impacts of the EOZ ordinance and the proposed revisions. To Friends knowledge, the cumulative impacts report did not compare the projected impacts in the EOZ EIS to the impacts that have occurred on the ground. For example, it is Friends understanding that the actual avian mortality rates from actual development have exceeded the mortality rates projected in the original EOZ EIS by an order of magnitude. As

[2] FINAL REPORT: Avian and Bat Cumulative Impacts Associated with Wind Energy Development in the Columbia Plateau Ecoregion of Eastern Washington and Oregon (West, Inc. Oct. 30, 2008).

such, preparation of a new EIS could incorporate the findings in the West Report and consider improving development standards to ensure cumulative adverse impacts are avoided.

The County should require compliance with WDFW Wind Power Guidelines.

Section 19.39:9(B)(k)(i) requires that applicants prepare pre-construction studies consistent with the Washington Department of Fish and Wildlife (WDFW) Wind Power Guidelines. The County should require that projects comply with all WDFW Wind Power Guidelines, not just the pre-construction study requirements.

The existing EOZ standards (subsections (B)(k)(ii) through (B)(k)(vi)) are similar to elements of the WDFW Wind Power Guidelines and other standards require consultation with WDFW. However, mere consultation with WDFW is not sufficient to prevent unacceptable adverse impacts to wildlife. Mandatory compliance with WDFW Wind Power Guidelines will provide clear standards for wind energy developers, and will provide beneficial protections for wildlife.

Similarly, the mitigation standards at the end of Section 19.39:9(B)[3] only require that the County "consider" the WDFW Wind Power Guidelines. In addition to making the WDFW guidelines discretionary, the standard creates an unnecessary requirement that recommendations taken from the guidelines "must be reasonable."

The County should require compliance with the WDFW Wind Power Guidelines. These guidelines were developed based on consultation with WDFW biologists, the wind industry, and advocacy groups. The guidelines are reasonable and unequivocally incorporating the guidelines into the EOZ ordinance will provide certainty as to the standards that apply to wind energy development.

If the County chooses not to require compliance with the WDFW Wind Power Guidelines, it should at least abandon the unnecessary and ambiguous "reasonableness" standard and delete the last sentence in the mitigation standard.

The County should have authority to require that applicants implement recommendations from Technical Advisory Committees, clarify the role of consolidated Technical Advisory Committees, and require that avian and bat monitoring reports be made available to the public via the County's website.

Currently Section 19.39:9(B)(k)(vii) grants the County authority to concur with Technical Advisory Committee (TAC) recommendations to project owners. But the project owner retains ultimate authority to implement any recommendations by the TAC. The County should retain authority to require post-construction actions to address unanticipated adverse impacts to wildlife.

Notably, to Friends' knowledge no existing developments within Klickitat County have generated recommendations from TACs that were not also supported by the project owner.

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[3] Again, the mitigation standards do not have an independent section letter or number. The County should provide a subsection letter or number to ensure clarity and to provide a citation for the standard.

Given the level of development that has occurred in the County, it appears unlikely that a TAC would seek to impose mitigation measures on a project owner unless there was an extraordinary divergence from the pre-construction fatality estimates. In such extreme cases it may be critical to retain substantive authority to require protection of wildlife resources.

The proposed revisions would grant the County discretion to allow TACs to serve multiple projects. Section 19.39:9(B)(k)(vii). To the extent TAC consolidation will increase efficiency of the TAC meeting process and improve regional analysis and coordination of monitoring efforts, Friends supports the proposed revision. However, it would be beneficial to clarify that consolidated TACs would not alter each project owner's independent obligation to monitor wildlife impacts. Also, consolidation of TACs should be based on regions within the County rather than exclusively on project ownership. Projects located on opposite ends of the County should not have consolidated TACs simply because of common ownership.

The County should also require that project owners make monitoring reports prepared for the TAC available to the general public. Since the TACs are public committees, all documents prepared for the committees should also be available to the general public. All monitoring reports should be published on the County's website. To the extent avian impact reports are consistent with projected impacts, publishing TAC reports on the County website should strengthen the credibility of the County's permitting process.

The County should adopt additional standards for the protection of visual resources

Section 19.39:9 of the EOZ ordinance includes standards to protect visual resources. The County should revise these standards to protect visual resources that have been identified as a significant.

The County's original EOZ EIS contemplated the establishment of buffers near sensitive scenic landscapes as a mitigation measure. EOZ EIS at p 3-110. The County should adopt a formal standard implementing this finding. This should include the establishment of a setback from the Columbia River Gorge National Scenic Area or a standard requiring that projects not adversely affect the visual resources of the National Scenic Area. Notably, similar standards can be found in both Washington and Oregon energy facility siting regulations. *See e.g.* WAC 463-47-110(1)(b)(ii) and (iv); OAR 345-022-0000(1)(a).

The County should also explicitly list visual resources as a resource to be protected in Section 19.39:9(A)(2).

The County should exclude forested areas from the EOZ as recommended in the original EOZ EIS.

The County's original EOZ EIS recommended that forested areas be excluded from the EOZ because large-scale energy development in those areas would likely lead to unacceptable impacts the environment. The EOZ EIS included numerous recommendations to exclude forested habitats from the EOZ. For reference, Friends has included those findings and recommendations as an attachment. For the most part the County followed the direction in the EIS, but some forested

areas appear to have been erroneously included in the EOZ. The County should review the EOZ map and revise the map to remove the forested areas.

The County should improve the micrositing and minor revision notice requirements.

The proposed revisions include changes to provisions related to micrositing turbines within an approved project and for reviewing minor revisions to approved projects. Sections 19.39:5(C) and (D). Friends encourages the County to consider the following modifications to those changes.

Draft Section 19.39:5(C)(3) would require that the Planning Department provide notice of certain micrositing decisions to parties that requested notice of changes to the specific project. Similarly, for minor revisions Draft Section 19.39:5(D) would require e-mail notification only to parties who have requested notice of minor revisions to a specific project.

The County should revise these provisions to require notice of to all parties eligible for notice under Sect. 19.39:6. This would include notice to property owners within 300 feet of the project, notice on the County's website, and e-mail notice to parties that are on the County's EOZ e-mail notification list.

Wind energy facilities often extend across miles of land. "Micrositing" turbines or other project elemtns within a project can result in dramatic differences the on-the-ground layout of a project. These changes may cause impacts that were not anticipated when the project was initially proposed. Similarly, minor revisions may impact parties that did not have concerns when a project was initially noticed for public comment. As such, there is a substantial public benefit to providing notice to all potentially interested parties of changes to facility design. Providing general notice would not burden County resources and would ensure transparency.

The County should clarify the appeal process for micrositing and minor revision decisions.

If the proposed revisions are approved, Section 19.39.9 would state: "Appeals may be filed to the Klickitat County Hearing Examiner within 20 days of the decision on project consistency with this chapter, which shall be heard consistent with applicable procedures in chapter 19.60."

It is not clear whether micrositing decisions and minor revision decisions are appealable decisions under this section. Because micrositing and minor revision decisions require review of project consistency with the EOZ ordinance, are substantive alterations of permits, those decisions must be subject to appeal. For clarity, the above-referenced section should be revised to state:

"Appeals may be filed to the Klickitat County Hearing Examiner within 20 days of ~~the~~ <u>any</u> decision on project consistency with this chapter, <u>including micrositing and minor revision decisions issued under Sections 19.39:5(c) and 19.39:5(D)</u>. ~~Which~~ <u>Appeals</u> shall be heard consistent with applicable procedures in chapter 19.60."

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The County should revise residential structure setbacks to reduce potential impacts to residential uses.

Draft Section 19.39:8(A)(1) would establish a 2,500-foot setback from residential structures and allow for a variance to reduce that setback to no less than 1,200 feet. The County should increase that setback standard to prevent potential adverse impacts to residents near wind energy facilities.

Recent studies have shown a potential for wind energy facilities to cause adverse impacts to human health. While the research is not conclusive, the uncertainty regarding health impacts of wind development warrant a precautionary approach to siting wind facilities near residential structures. In addition, Klickitat County has abundant wind resources in relatively isolated locations. As such, there is likely ample space to allow for robust wind energy development with substantial setbacks from residences. Friends encourages the Planning Commission to adopt 1.25 mile setbacks from residential structures and undeveloped residentially zoned lands.

If subsequent research into the potential health risks posed by wind energy facilities on human health show that the risks are minimal, then the County can revise its setback standards accordingly.

Conclusion

Thank you for the opportunity to comment.

Sincerely,

Richard Till
Land Use Law Clerk

Attachment "B"

SETTLEMENT AGREEMENT C06505

This Settlement Agreement ("Agreement") is effective on the date identified in paragraph 4 below, by the following, individually referred to as "party" and collectively referred to as "parties" to settle a State Environmental Policy Act ("SEPA") appeal of Klickitat County's Energy Overlay Environmental Impact Statement, pending before the Klickitat County Hearing Examiner ("Appeal"):

1. Parties

1.1 County. Klickitat County ("County"), a Washington municipal corporation, having a business address of 205 S. Columbus Avenue, Goldendale, Washington 98620.

1.2 Appellants. Appellants are Columbia Riverkeeper, Friends of the Columbia Gorge, Jay Letto, Daniel Lichtenwald, and Dawn Stover. The parties in this paragraph are collectively referred to as "Appellants."

1.3 Legal Representation. The County is represented by the Prosecuting Attorney, Timothy S. O'Neill, and Foster Pepper & Shefelman PLLC. The Appellants are represented by Richard A. Poulin of Smith & Lowney, PLLC (Columbia Riverkeeper, Friends of the Columbia Gorge, Jay Letto, Daniel Lichtenwald, and Dawn Stover); and Nathan Baker (Friends of the Columbia Gorge).

2. Background

2.1 Klickitat County issued a Final Environmental Impact Statement ("FEIS") for proposed development regulations, zoning map, and Comprehensive Plan amendments to implement an energy overlay on September 3, 2004.

2.2 Appellants appealed on September 24, 2004, and a Hearing Examiner was appointed to hear the Appeal.

2.3 Rather than engaging in protracted litigation, the parties agreed to enter into settlement negotiations. The parties negotiated (1) revised development regulations ("SA Development Regulations") (Attachment 1); and (2) revised zoning map, which better defines the Energy Overlay Zone boundaries ("SA Zoning Map") (Attachment 2 is a reduced copy of the actual map, which is approximately eight feet long).

2.4 The purpose of the Agreement is to settle the Appeal, and to identify additional mitigation conditions applicable to proposed energy facilities.

3. **Terms of Agreement**

3.1 Appellants' Obligations

(a) If the County adopts the SA Development Regulations in substantially the same form as in Attachment 1, and the SA Zoning Map shown in Attachment 2 (although the County may exclude areas shown as being within the Energy Overlay Zone on the SA Zoning Map from the Energy Overlay Zone), the Appellants agree to (1) stipulate to dismissal of the Appeal with prejudice; and (2) not file an appeal of the County's energy overlay Comprehensive Plan amendments, SA Development Regulation Amendments, or SA Zoning Map.

3.2 County Obligations

(a) The Board of County Commissioners will consider, following public hearing, adopting the SA Development Regulations and SA Zoning Map. This Agreement shall be effective only upon the adoption of the SA Development Regulations and SA Zoning Map in substantially the form as in Attachments 1 and 2. The County may exclude areas shown as being within the Energy Overlay Zone on the SA Zoning Map from the Energy Overlay Zone.

(b) The County stipulates that Appellants have not, with this settlement, forfeited any right to appeal or challenge future energy projects and future development regulation amendments adopted by the County based on the failure to comply with SEPA. The County further stipulates that in making future SEPA decisions, it will not rely on those portions of the September 3, 2004 FEIS relating to the effects of gas-fired and/or biomass projects without providing a public process for challenging these portions under SEPA.

(c) In seven years, or after 1000 MW of wind energy is constructed (as calculated from the date of the Agreement), whichever occurs first, the Planning Commission will hold a public hearing. The purpose of the public hearing will be to reevaluate the energy overlay zone and take public comment on the energy overlay development regulations and comprehensive plan policies. Following the Planning Commission public hearing, the Board of County Commissioners will also hold a public hearing for the same purposes. Neither the Planning Commission nor the Board of County Commissioners is required to take any action as a result of these hearings, although it may elect to amend the comprehensive plan policies and/or development regulations.

3.3 General Obligations

(a) The Agreement does not constitute an admission or waiver of the validity of any claims or defenses applicable to the Litigation.

(b) The Agreement and its exhibits represent the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. Any amendment must be in writing.

(c) The rights and obligations created by the Agreement are for the sole benefit of the Parties, and no person not a party shall be a beneficiary, intended or otherwise, of any such rights or be entitled to enforce any of the obligations created by this Agreement.

4. **Effective Date and Execution.**

After the parties have executed the Agreement, it shall take effect upon adoption of the SA Development Regulations and SA Zoning Map in substantially the same form[1] as in Attachments 1 and 2.

[1] Although the County may exclude areas shown as being within the Energy Overlay Zone on the SA Zoning Map from the Energy Overlay Zone.

5. **Signatures**

BOARD OF COUNTY COMMISSIONERS

Don Struck
Klickitat County Commissioner, District 1
Dated _____

Joan Frey
Klickitat County Commissioner District 2
Dated 3/15/05

Ray Thayer
Klickitat County Commissioner District 3
Dated 3-15-05

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Klickitat County EOZ EIS recommendations regarding forested land (Sep. 2004)

"According to Priority Habitat Land Use data, forested areas host higher concentrations of owl and other sensitive species habitats." EOZ EIS at 2-15.

"Based on this screening of the Alternatives, areas with high concentrations of forested habitats are recommended to be excluded from the geographic scope of the Overlay because forest habitats have:

- Higher potential for use by sensitive species and avian species likely to be impacted by wind turbines
- Greater geographic discontinuity (more dispersed) within the County and less similarity compared with agricultural, commercial, and range land." Id. at 2-15.

"Use of the study area by large falcons (prairie falcons) was significantly higher in forested habitats than agricultural or grassland habitats . . ." Id. at 3-53.

"Under the Geographic Alternative, the proposed Overlay would exclude some bird habitats associated with forested areas. It could also reduce impacts by mapping that excludes some of the County's higher bird use habitats including cliffs, caves, forested areas, wetlands, and riparian zones and requiring additional mitigation measures in these areas." Id. at 3-68.

"The DEIS considered the presence of large concentrations of forested habits as one of many factors in setting the boundary of the proposed energy overlay. The intent was to exclude large concentrations of areas of forest habitat because forest habitats tend to be more complex, have higher biodiversity, and lack ideal siting conditions for energy development." Id. at G-18.

"While all energy projects have environmental impacts, the northern portions of the County tend to contain more heavily forested habitat, while the southern portions tend to have better energy resources and infrastructure. Because of this, it is possible for the EOZ to be located to take advantage of both energy resources, but also avoid some of the more forested areas of the County. No location will be impact free, but the EOZ can be located with a sensitivity to environmental impacts. To further tailor the location of the EOZ, the Limited Geographic Alternative was developed in response to comments." Id. at G-43.