

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 form¹ as in Attachments 1 and 2.

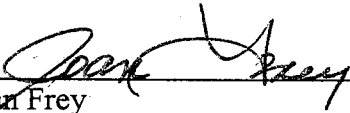
¹ Although the County may exclude areas shown as being within the Energy Overlay Zone on the SA Zoning Map from the Energy Overlay Zone.

5. Signatures

BOARD OF COUNTY COMMISSIONERS



Don Struck
Klickitat County Commissioner, District 1
Dated _____



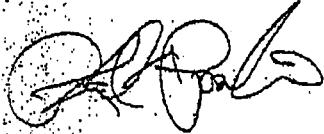
Joan Frey
Klickitat County Commissioner District 2
Dated 3/15/05



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

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SMITH & LOWNEY, PLLC



Richard A. Poulin, -WSBA No. 27782
Attorney for Columbia Riverkeeper, Friends of the
Columbia Gorge, Jay Letto, Daniel Lichtenwald,
and Dawn Stoyer
Dated 3/8/05

FRIENDS OF THE COLUMBIA GORGE, INC.



Nathan Baker, WSBA No. 35195

Staff Attorney for Friends of the Columbia Gorge, Inc.

Dated 3/8/05

Approved as to form:

KLICKITAT COUNTY PROSECUTING ATTORNEY



Timothy S. O'Neill, WSBA No. 14085

Attorney for Klickitat County

Dated 3-11-05