

ORDINANCE NO. 005311

AN ORDINANCE OF KLICKITAT COUNTY, WASHINGTON RELATING TO LAND USE AND ZONING; REVISING ORDINANCE NO. O081710; AND AMENDING KLICKITAT COUNTY CODE TITLE 19 RELATING TO ZONING, AND THE ENERGY OVERLAY ZONE.

WHEREAS, Klickitat County adopted Ordinance O031505 in 2005, to plan for and regulate energy development within the County through an Energy Overlay Zone, or EOZ; and

WHEREAS, Ordinance O31505 also adopted County Comprehensive Plan provisions providing for energy development, particularly within the EOZ, where projects are permitted outright; and

WHEREAS, on February 16, 2010, the Klickitat County Planning Commission held a public hearing pertaining to the proposed EOZ revisions. On March 18, 2010, the Planning Commission considered additional public comment and material pertaining to the EOZ; and

WHEREAS, On June 1, 2010, the Klickitat County Board of County Commissioners (“Board”) held a public hearing pertaining to the proposed EOZ revisions; and

WHEREAS, on August 17, 2010, the Board adopted Ordinance O081710, which amended portions of the EOZ Ordinance; and

WHEREAS, on September 7, 2010, Friends of the Columbia Gorge (“Friends”) filed a litigation in Klickitat County Superior Court, Case No. 10-2-00295-8; and

WHEREAS, the Friends and the County agreed to enter into a settlement agreement to settle the appeal without engaging in protracted litigation; and

WHEREAS, under the Settlement Agreement, Friends agreed to withdraw the appeal if Klickitat County would consider amending Klickitat County Code Sections 19.39:5.C.3, 19.39:5.D to clarify the noticing requirements of specified project changes and Klickitat County Code Section 19.39:9.B(k) to make a clarification on technical advisory committee reporting procedure; and

WHEREAS, the Klickitat County Board of Commissioners held a public hearing on May 31, 2011 to review proposed amendments and receive public testimony on same; and

WHEREAS, the Klickitat County Board of Commissioners found that adoption of the proposed amendments would resolve the litigation; provide procedural clarification on minor and micro-siting decision review, and technical advisory committee review; and would be in the interest of the public.

NOW, THEREFORE BE IT ORDAINED,

The Board of County Commissioners adopts the attached amendments to Title 19 of the Klickitat County Code to take effect immediately.

The provisions of this ordinance are declared separate and severable. The invalidity of any portion of this ordinance shall not affect the validity of the remainder of the ordinance.

ADOPTED this 31st day of May, 2011.


Rex F. Johnston, Chairman


Ray Thayer, Commissioner


David Sauter, Commissioner

Constituting the Klickitat County
Board of Commissioners
Klickitat County, Washington

ATTEST:

Clerk of the Board


in and for the County of Klickitat,
State of Washington

APPROVED AS TO FORM:

CLICKITAT COUNTY PROSECUTING ATTORNEY


Lori Lynn Hocfor, WSBA No. 39009
Attorney for Klickitat County

Dated

5/18/2011

Klickitat County Code

Section 19.39:5 Process for Energy Resource Operations

C. Micro-Siting.

1. All terrestrial habitat, critical area assessments, and cultural resource studies required shall be conducted within identified study corridors of sufficient width and dimension to enable comprehensive environmental assessment while allowing flexibility in the final layout.

2. Actual final locations of wind turbine generators, below-ground electrical cables, and above-ground electrical transmission towers will be established during the micro-siting process, occurring after permit review and prior to actual construction. During the micrositing process (when the final, exact locations of the turbines and other project elements and equipment are determined) the applicant will typically balance a number of technical and engineering factors, including limitations imposed by the terrain, wind data (speed, wind shear, etc.), wake effects of turbines on others, feasibility of access, setbacks (internally established or based on permit requirements), geotechnical considerations (subsurface conditions), environmental restrictions (avoidance of sensitive habitat), cultural/archaeological restrictions, telecommunications constraints (line of sight microwave paths), FAA requirements, and other site-specific criteria that are not fully resolved until final engineering is completed.

3. The Planning Department shall review final project lay-out, which must be completed before construction activities occur. If final turbine lay-out extends beyond the initial corridors approved in the EOZ permit, before completing review, the Department shall provide at least two weeks notice to parties who have requested notice with respect to the project and to all individuals and entities who have notified the County they wish to be on the County's energy resource operations e-mail notification list. The lay-out must be consistent with the permit conditions and all other applicable County requirements.

D. The Planning Department may approve minor revisions to EOZ permit text or project area. Minor revisions are revisions which are within the scope of previous environmental review, are generally consistent with permit conditions, and do not constitute a major deviation from the EOZ permit. Minor revisions include the addition of property to a project which does not exceed 160 acres of leased property and would not increase the number of permitted turbines or permitted power output. A survey may be required to confirm the acreage. If multiple requests for minor revisions to the same project are submitted, they shall be considered cumulatively. The total acreage outside the originally approved project area for all minor revisions approved for a single project shall not exceed 160 acres of leased property. Any parties who have requested notice with respect to the project and all individuals and entities who have notified the County they wish to be on the County's energy resource operations e-mail notification list shall be sent e-mail notification at least 14 days before the revision review is completed. In addition, if the revision involves an expansion of project area, all owners of land adjacent

to newly included parcels shall be mailed notice at least 14 days before the review is completed. Any minor revision that involves expansion of the project area which may impact wildlife/habitat values, shall include WDFW consultation.

E. The Planning Department shall review final turbine layout before building permits are issued to ensure compliance with permit conditions.

19.39:9.B.(k)(vii) Vegetation and Wildlife

(vii) The applicant (in consultation with Klickitat County) shall form a Technical Advisory Committee (TAC) before project construction and after all permit appeal periods have closed. Representatives of Washington State Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, landowners, the applicant, the Yakama Nation, and local environmental groups shall be invited to participate. The Planning Department will review and approve TAC membership as meeting the intent of the EOZ; at the discretion of the Department, TACs may serve more than one project wherein it is more efficient to have one TAC serving several projects (such as in the situation where a developer has several separate wind projects with the same landowners or other situations). TAC consolidation does not alter each project owner's independent monitoring obligations. The TAC will consider problems and impact mitigation issues and will serve for the life of the project. Where feasible, all post-construction monitoring TAC reports shall identify the species of each carcass and the turbine responsible for the fatality. TAC will examine information relevant to assessing project impacts to avian and bat species. TAC will determine whether further mitigation measures would be appropriate, considering factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings regionally or at a nearby wind power facility. If appropriate in the TAC's judgment with respect to the significance of the impact identified, and the County concurs with the recommendation, or takes no position, the TAC shall recommend mitigation measures to the developer. The ultimate authority to implement additional mitigation measures, including any recommended by the project TAC, will reside with the project owner. The TAC's participation is intended to ensure that monitoring data is considered in a forum in which independent and informed parties can collaborate with the owner to develop appropriate responses.