



201 West Main Street, #14
Charlottesville, VA 22902-
5065
(434) 977-4090
(434) 977-1483
SouthernEnvironment.org

May 13, 2008

Linda Brett
Acting Forest Supervisor
George Washington and Jefferson National Forests
5162 Valleypointe Parkway
Roanoke, Virginia 24019
lbrett@fs.fed.us

BY E-MAIL AND U.S. MAIL

Re: Wind Turbine Proposal for Church Mountain, George Washington National Forest

Dear Ms. Brett:

We understand that the George Washington National Forest (GWNF) has received a verbal proposal for an industrial scale wind power project on Church Mountain and Great North Mountain in the Lee Ranger District in Rockingham, Shenandoah, and Hardy (WV) Counties. Based on the information the proponent provided to the Federal Aviation Administration (FAA), the wind project as currently proposed would entail 131 turbines, each 440 feet tall, along 18 miles of ridgetop (see attached map dated 3/21/08). While we support renewable, clean energy development in Virginia, we have serious reservations regarding the use of our limited national forest land as the location for such projects.

We understand that this proposal (or at least a proposal for meteorological testing towers) now is going through the Forest Service's initial screening process for special use permits. We strongly recommend that a special use permit for the wind turbine project on Church Mountain be rejected for the reasons discussed further below. This undisturbed forested ridgetop is highly valued for its wildlife, recreation, and scenic attributes. Because the site is so poorly suited for large scale wind development, even a proposal for testing towers should be rejected in order to avoid further investing time and money in a completely unsuitable site.

Any consideration of a testing tower permit must also examine the potential impacts of full scale wind development. The fact that the existing wind maps for Virginia show this public ridgetop as having substantial wind resources, combined with the federal tax credit for building

NC/SC Office: 200 W. Franklin Street, Suite 330, Chapel Hill, NC 27516-2559 919-967-1450
GA/AL Office: The Candler Building, 127 Peachtree Street, Suite 605, Atlanta, GA 30303-1840 404-521-9900

the proposed installation, make it reasonably foreseeable that the applicant will proceed with an application to develop the entire facility. The fact that the applicant has already applied to the FAA for clearance of the entire facility reinforces the need to consider the whole project up front.

The following are our initial comments on this proposal based on the limited information we have to date. We urge the USFS to reject the proposal given its failure to meet the screening criteria. Should the agency continue to process any proposal at this or any other National Forest site, we ask the agency to keep us informed so that we may comment further before any decision is made to accept a formal application and proceed with the special use permit review process.

Under the Forest Service special use regulations, proposals for special uses go through two initial screenings prior to the formal application stage.

1. Under the initial screening provided for in 36 C.F.R. §251.54(e)(1), the proposal must meet nine criteria.

Under subparagraph (i) the proposed use **must be consistent with the laws, regulations, orders and policies establishing or governing national forest system lands and with other applicable federal law.**

The proposed wind turbine project is likely to violate the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq.; the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §703-712; and the Golden Eagle Protection Act, 16 U.S.C. §668-668(d). See attached letter from U.S. Fish and Wildlife Service (FWS) to Ms. Wendy Tidhar, November 16, 2007 (“FWS Letter”).

The FWS letter stated that a proposed wind turbine project on nearby Shenandoah Mtn. “pose[d] a reasonable likelihood of take of species protected by the ESA, MBTA and Eagle Act.” FWS Letter at 1. We expect that these concerns also apply to the Church Mtn. site.

The FWS predicted that wind turbine operations would kill federally-listed bats. FWS Letter at 10. Four bat hibernacula within 10 miles of the Shenandoah Mtn. site support Endangered bats. One is inhabited by both Indiana bats and Virginia big-eared bats and the other three are occupied by Virginia big-eared bats. FWS Letter at 2-3, 9-10.

The FWS also pointed out a known bald eagle nest within 4.3 miles of the Shenandoah Mtn. site. The FWS was concerned that eagles could be killed by collisions with the Shenandoah Mtn. wind turbines (as has been an ongoing problem at a California wind turbine power facility) and that facility operations could disturb the eagles’ breeding, roosting and foraging habits. FWS Letter at 7-9. The FWS noted that neither the MBTA nor the Eagle Act permits incidental kills by collision with wind turbines. FWS Letter at 2. The FWS also predicted wind turbine operations could kill migratory songbirds and other soaring birds, like hawks, which would violate the MBTA. FWS Letter at 6.

Bald and golden eagles are known from the Kimsey Run Reservoir near Lost River, about five miles from the Church Mtn. site. This February, a local resident observed about 80

bald eagles and 15 golden eagles in one day at Kimsey Run. Therefore, the Church Mtn. site appears to pose similar threats to protected eagles.

Finally, the FWS noted that the construction of the wind turbines, access roads and support facilities may destroy an Endangered plant, the Shale Barren Rock Cress.

Based on concerns about killing and disturbing Endangered and non-endangered bats, eagles and migratory birds, the FWS viewed the Shenandoah Mtn. site as a ‘high risk’ site and recommended against constructing a wind power facility there. We believe the Church Mtn. site probably poses similar risks and is not an appropriate location for a wind turbine facility.

Subparagraph (ii) provides the **proposed use must be consistent with standards and guidelines in the applicable forest land and resource management plan**. The existing plan does not provide for commercial wind turbine installations. Some of the land in question (Rockingham County portion) is in the Remote Highlands Management Area (MA 9) under the existing GWNF forest plan. Such a project along 18 miles of ridge line with substantial access roads would be contrary to the desired conditions for remote recreation, near-natural environments and unfragmented habitat and to standards prohibiting new road construction. See 1993 GW Forest Plan at 3-43-45.

In addition, the draft revised forest plan for the GWNF dated February 2007 classifies the Rockingham County portion of the site as unsuitable for commercial wind energy development. See 2/15/07 draft CER at 119-120 and map dated 2/9/2007. The draft revised plan also placed this portion in a Remote Backcountry Special Area. See map dated 2/9/2007.

The wind project also would be inconsistent with the Remote Wildlife Habitat Management Area (MA 14) assigned to the northern portion of the ridge. MA 14 is intended to provide large, contiguous tracts of remote habitat, on its own or together with adjacent remote areas such as MA 9, as in this case. See 1993 Plan at 3-74. The area is managed to provide mature forest habitat and freedom from disturbance for species such as black bear. Id. Public motorized use is restricted, even timber management must be carefully planned to minimize overall disturbance and access roads may be only low-standard and closed to all but administrative use, and overall road density is limited. Id. at 3-74-76. The permanent forest clearing, continuous operation and access roads required for this wind installation would not be consistent with these goals and standards.

Subparagraph (iv) provides that **the proposed use will not create an exclusive or perpetual right of use or occupancy**. The proposed wind turbine installation would require exclusive occupancy of the ridge line for the turbine installations and access roads all along and up to the ridge line in an area where a popular hiking trail now runs. The proposed use would eliminate the hiking trail in any natural setting and be the exclusive use.

Examples of this type of exclusive right or occupancy (or the appearance of such a right) are some major capital improvements by municipal entities. Forest Service Handbook (FSH) 2709.11, 12.21(4)(b). A wind power facility certainly would be a major capital investment.

2. The proposal fails to meet the terms required in the second level of screening provided for under 36 C.F.R. §251.54(e)(5), and must be rejected.

Under 36 C.F.R. §251.54(e)(5) , the authorized officer shall reject a proposal if the officer determines that:

(i) the proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) the proposed use would not be in the public interest; or...

The land in question is currently managed primarily as a hiking trail along the ridgetop, within remote recreation- and wildlife- oriented management areas. The trail is part of the Great Eastern Trail being established by a variety of user groups as an alternative to the Appalachian Trail, running west of the AT from the AL-FL state line to New York state. The location of a substantial road and turbine installations is clearly not consistent or compatible with the current purposes for which the land is managed.

The forest clearing and fragmentation required for the facility is also incompatible with the purposes for which the land is managed. The ridgetop access road would likely require a clearing 50 to 100 or more feet wide based on what has happened at other facilities (as opposed to what the developer suggested might occur). Each turbine clearing would likely average about 2 acres in size. It is also important to recognize that the clearing of forest for roads and powerlines may result in an additional forest loss of about 2-3 acres per turbine (i.e., a wind energy project built atop a forested ridge likely results in the total clearing of 4 to 5 acres of forest per turbine).

The ridgeline in question is also found in two Mountain Treasure areas which the upcoming publication suggests should be inventoried roadless areas. Two Virginia wind land classification efforts both found uninventoried roadless areas to raise significant concern. See Landscape Classification System for Virginia, at p.17, 4/21/05, at www.VAwind.org (listing uninventoried roadless areas as “unsuitable unmapped”); and VWEC, Landscape Classification System for Virginia, at p. 15, May 2005 (listing uninventoried roadless areas as “Flagged for Potential Use Conflict”).

In addition, the proposed use, despite its clean energy benefits, is not in the public interest given the broad and growing interest of the public in the recreational attributes of this 18-mile ridge line.

At this stage, the applicant must also **demonstrate why the use of National Forest lands is necessary.** Under the Forest Service Handbook implementing the special use regulations, FSH 2709.11, 12.32(a), the appropriate use of National Forest lands is one aspect of these second-level screening requirements for consistency and compatibility with land management purposes and the public interest.

The FSH provides that “[t]he proponent must explain the selection of the location of the proposed use and, in particular, why use of National Forest System lands is necessary and why lands under other ownership cannot be used. Deny proposals for use of national forest system lands when the request is based solely on affording the proponent with a lower cost or less restrictive location than can be obtained on non-Federal lands.” FSH 2709.11, 12.32a.

A review of wind energy maps in Virginia and neighboring states shows that wind resources exist on private ridgetops throughout the Appalachian region. The applicant will have difficulty providing any legitimate reason for pursuing this project on public lands other than the hope that dealing with one landowner, the U.S. Forest Service is easier and could be less expensive than dealing with multiple private landowners.

A preliminary review of wind potential maps in western VA reveals that private land ridgetops account for more than half of the class 3+ wind potential in the western part of the state, assuming national parks and national wilderness areas are off limits to wind development. Thus, there is no reason to degrade national forest ridgetops to pursue renewable energy development in western VA. The applicant cannot demonstrate it is necessary to locate wind turbines in the George Washington National Forest.

Demonstrating the need to use National Forest lands is part of the second-level screening criteria and the FSH repeatedly instructs that proposals which cannot meet this and the other criteria must be denied. FSH 2709.11, 12.32, 12.4.

Because a wind turbine project on Church Mtn. does not meet these screening criteria, the Forest Service should reject the proposal. See 36 C.F.R. § 251.54(e)(2), (5) (any proposed use that does not meet all of the screening requirements “shall not receive further evaluation and processing” and the agency “shall reject” it); see also FSH 2709.11, 11.22 (“authorized officer shall return to the proponent without further consideration any proposal that does not meet the initial screening criteria”); FSH 2709.11, 11.24 (“authorized officer shall deny any proposal that fails to meet the second-level screening criteria”).

3. BLM and FWS guidelines

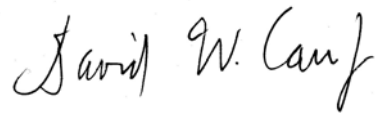
The Bureau of Land Management (BLM) and FWS guidelines for wind energy development also suggest that the Church Mtn. site should be avoided. The draft revised GW forest plan(p.75) and CER(p.118-19) (2/15/07) state that the USFS will follow the BLM’s October 16, 2002, interim guidance for wind development until the USFS has its own. The BLM guidance, in turn, encourages the use of the FWS guidelines for evaluating potential sites.

The BLM guidance states that the “overall wind energy policy is to minimize negative impacts to the natural, cultural and visual resources on the public lands. Negative impacts can be minimized by avoiding special management areas with land use restrictions, avoiding major avian (bird) migration routes and areas of critical habitat for species of concern. . .” BLM Guidance p.2.

The FWS guidance recommends that wind development avoid, among other sites: documented locations of federally-listed species; local bird migration pathways or areas where birds are highly concentrated; sites near bat hibernation, breeding and maternity colonies and in bat migration corridors or flight paths; areas known to attract raptors, including eagles; and avoid fragmenting large, contiguous tracts of wildlife habitat. FWS, Interim Guidance for Avoiding and Minimizing Wildlife Impacts from Wind Turbines, pp. 3-4 (5/13/03). Based on the known or likely presence of these resources in the area, as discussed above, these guidelines suggest that the Church Mtn. site should be avoided completely.

Thank you for your consideration. Please contact us if you have any questions.

Sincerely,



David W. Carr, Jr.
Senior Attorney
Public Lands Director



Sarah A. Francisco
Staff Attorney

Enclosures

cc: Kenneth Landgraf, USFS