

ENVIRONS

Washington Supreme Court Gives Green Light to State Approval of Wind Farms Over Local Objections

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Breaking Developments In Environmental Law

Washington Supreme Court Gives Green Light to State Approval of Wind Farms Over Local Objections

A unanimous Washington Supreme Court ruling on November 20 should give backers of large-scale wind projects a major boost in their efforts to build wind farms in this state. In *Residents Opposed to Kittitas Turbines v. Energy Facility Site Evaluation Council* (“ROKT”), the court ruled that the Governor and the state Energy Facility Site Evaluation Council (“EFSEC”) have the power to override local zoning ordinances that might hinder development of wind projects.

The *ROKT* case arose from the Kittitas Board of County Commissioners adopting a stringent Wind Farm Resource Overlay Zoning ordinance that effectively blocked a proposed wind project along Highway 97 between Cle Elum and Ellensburg. Although the developers significantly scaled back their proposal from 121 wind turbine generators to 64, the county rejected their application in part because of concerns about the visual impacts of even that many 300- to 400-foot towers on ridge tops in plain sight of residents and the traveling public. The project developers then asked EFSEC to pre-empt the County process. EFSEC granted the request and ultimately recommended that the Governor approve the development, which she did after having EFSEC re-examine whether additional setbacks should be required.

The legislature created EFSEC to provide comprehensive oversight of the siting of energy facilities in Washington. Traditional forms of power generation, such as coal, natural gas and nuclear, are required to go through the EFSEC process; alternative energy projects (wind, solar, geothermal, landfill gas, wave or tidal action or biomass) have the option of applying to EFSEC for approval.

The Supreme Court’s opinion in *ROKT* covers a number of procedural and substantive issues but the bottom line is that the “one-stop” permitting process for energy projects set up through EFSEC has been given authority to supplant local decisions that might restrict alternative energy projects. The EFSEC process is not intended to ignore local concerns; indeed, the authorizing statute requires a determination of whether the site is consistent and in compliance with local zoning ordinances. Nevertheless, even if a project is deemed inconsistent, the *ROKT* decision lends support to the state approving an alternative energy development over the objections of a local governing body.

As Washington utilities move to comply with a statutory mandate to increase the amount of electricity they obtain from renewable sources, the *ROKT* decision could prove to be a benefit not just for developers of wind farms but other large-scale alternative energy projects as well. At the same time, the decision will add further fuel to the longstanding position of local interests that the state is ignoring the impacts of such projects on their communities.

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