

# The NC Ridge Law Is No Obstacle to Wind Power

August 24, 2003

The North Carolina Mountain Ridge Protection Act, commonly called the "Ridge Law," was enacted by the NC General Assembly in 1983 in response to public outcry to a high rise resort on Sugar Top Mountain in Avery County. The law protects ridges at or above 3,000 feet elevation or which are 500 feet or more above an adjacent valley floor, limiting building heights to 40 feet. The Ridge Law has a provision which specifically exempts "windmills" from the restrictions which prohibit other tall structures on mountain ridges in North Carolina.

## **The Mountain Ridge Protection Act of 1983 (14 NCGS § 113A)**

### **§ 113A-206. Definitions.**

Within the meaning of this Article:

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. **"Tall buildings or structures" do not include: a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both. b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills.** [emphasis added]

Some say that the 1983 windmill exemption actually referred to farm wind-powered water pumps and that the law must be amended to allow wind-powered electric generators. However, the legislative findings (§ 113A-207) embodied in the Ridge Law cite water supply, sewage, and other problems; nowhere did the General Assembly make specific reference to farm windmills:

### **§ 113A-207. Legislative findings.**

The construction of tall or major buildings and structures on the ridges and higher elevations of North Carolina's mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and to visitors to the mountains. Supplying water to, and disposing of the sewage from, buildings at high elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of those persons living at lower elevations. Providing fire protection may be difficult given the lack of water

*continued*

supply and pressure and the possibility that fire will be fanned by high winds. Extremes of weather can endanger buildings, structures, vehicles, and persons. Tall or major buildings and structures located on ridges are a hazard to air navigation and persons on the ground and detract from the natural beauty of the mountains. (1983, c. 676, s. 1.)

In the early 1980's the term windmill was commonly applied to wind powered generators in North Carolina. In 1978 the US Department of Energy and NASA constructed a 140 foot tower in Boone, NC and installed a 2 megawatt wind turbine, the largest wind generator in the world at that time.

The Boone wind experiment gained statewide and national fame. The headline in the July 12, 1979 *Raleigh News & Observer* stated: "Amid merry fanfare, big windmill dedicated." Daily papers in Asheville, Morganton, Hickory, Winston-Salem, Charlotte, Richmond and Atlanta also used the term windmill to describe the project. It is impossible to believe that the Ridge Law exemption for windmills was inserted by legislators in 1983 without knowledge of the Boone project.

Johnson County, Tennessee has its own ridge protection law which is virtually identical to North Carolina's statute. In 2002 the Tennessee Valley Authority performed an Environmental Assessment for a wind farm on Stone Mountain, a site in rural, mountainous Johnson County. TVA concluded that the Mountain Ridge Protection Act of Johnson County would not prevent the construction of a facility with 14 wind turbines producing 20 megawatts of power. Further, local governments located near the proposed wind farm supported the siting of the project near their communities. Tennessee Valley Authority's Environmental Assessment states:

TVA's interpretation of the Act as a law not applying to windmills is supported by the County, as on February 21, 2002, the Johnson County Board of Commissioners approved a resolution stating that the ridge law, in their opinion, does not preclude the proposed wind farm.

North Carolina's Department of Justice issued a press release stating that the Environmental Assessment prepared by TVA concluded that the Stone Mountain windfarm would have been allowed under North Carolina law. In written comments to TVA, NC Attorney General Roy Cooper disagreed, saying that North Carolina's Mountain Ridge Protection Act of 1983 would prohibit construction of the windfarm. However, no case law was cited and no cogent legal argument was mounted in Cooper's letter.

The North Carolina Ridge Law faced formidable opposition in 1983 from developers. Those interests have gained strength over the last twenty years. Giving the NC General Assembly the opportunity to tinker with this landmark legislation invites further exemptions for ski resorts, high rise condominiums, and other structures. Given the risks of runaway amendments and the legal exemption for windmills, it is both unwise and unnecessary to re-open the Ridge Law in order to build wind powered electric generators in North Carolina.

Louis Zeller

## BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

www.BREDL.org ~ PO Box 88 Glendale Springs, North Carolina 28629 ~ Phone (336) 982-2691 ~ Fax (336) 982-2954 ~ BREDL@skybest.com