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JUN 28 2011 THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY RECORDS

STATE OF OREGON

In the Matter of Amending	)	
Development Code for Wind	)	ORDINANCE NO. 2011-05
Power Generation Facility	)	
Conditional Use Permits	)	

WHEREAS on May 20, 2003, the Board of Commissioners adopted Ordinance No. 2002-02, establishing requirements for the siting of wind power generation facilities, codified at Section 152.616 (HHH) of the Umatilla County Code of Ordinances;

WHEREAS the Planning Commission and Planning Department staff have drafted updates to the siting standards for wind power generation facilities;

WHEREAS the Umatilla County Planning Commission held work sessions and discussions on the matter a number of times, including December 17, 2009, and January 13, 2011, and held a public hearing regarding the proposed amendments on November 18, 2010 and February 24, 2011, and forwarded the proposed amendment to the Board of Commissioners with a recommendation for adoption;

WHEREAS the Board of Commissions held a public hearing on March 17, 2011, continued to May 12, 2011, June 14, 2011 and June 28, 2011, to consider the proposed amendments, and voted to approve the amendments to the Land Development Ordinance as set out in this ordinance.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains the adoption of the following amendment to the County Land Development Ordinance, codified in Chapter 152 of the Umatilla County Code of Ordinances, to amend as follows (Strikethrough text is deleted; Underlined/Italicized text is added):

§ 152.615 ADDITIONAL CONDITIONAL USE PERMIT RESTRICTIONS.

In addition to the requirements and criteria listed in this subchapter, the Hearings Officer, Planning Director or the appropriate planning authority may impose the following conditions upon a finding that circumstances warrant such additional restrictions:

- (A) Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such a environmental effects as noise, vibration, air pollution, water pollution, glare or odor;
- (B) Establishing a special yard, other open space or lot area or dimension;
- (C) Limiting the height, size or location of a

building or other structure;

(D) Designating the size, number, location and nature of vehicle access points;

(E) Increasing the required street dedication, roadway width or improvements within the street right of way;

(F) Designating the size, location, screening, drainage, surfacing or other improvement of a parking or loading area;

(G) Limiting or otherwise designating the number, size, location, height and lighting of signs;

(H) Limiting the location and intensity of outdoor lighting and requiring its shielding;

(I) Requiring diking, screening, landscaping or other methods to protect adjacent or nearby property and designating standards for installation and maintenance.

(J) Designating the size, height, location and materials for a fence;

(K) Protecting and preserving existing trees, vegetation, water resources, air resources, wildlife habitat, or other significant natural resources;

(L) Parking area requirements as listed in §§ 152.560 through 152.562 of this chapter.

### **§152.616 STANDARDS FOR REVIEW OF CONDITIONAL USES AND LAND USE DECISIONS.**

The following standards shall apply for review by the Hearings Officer, the Planning Director or appropriate planning authority of the specific conditional uses and land use decisions listed in this chapter:

(HHH) Commercial Wind Power Generation Facility.

#### (1) County Permit Procedure.

The procedure for taking action on the siting of a Wind Power Generation Facility is a request for a conditional use. A public hearing pursuant to Section ~~§ 152.750-755~~ and 152.771 shall be held to determine if the applicant meets the siting requirements for a Wind Power Generation Facility. Notice of the hearing shall be provided to all landowners within the setback areas of the project site.

The county procedural requirements set forth in Section 152.616(HHH)(1) - (5), including the requirement for a hearing, will not apply to proposed Wind Power Generation facilities for which EFSC Energy Facility Siting Council is making the land use decision.

#### (2) Pre-application Meeting.

A pre-application meeting(s) is required. The applicant will be expected to bring preliminary information about the application components described in Application Requirement (5) below. County staff will arrange the meeting and will invite local, state, federal and other agency representatives and individuals with pertinent expertise. The purpose of the pre-application meeting will be to identify potential impacts and opportunities and to advise on the level of detail required in each of the application components described in (5) below, and establish technical oversight requirements for monitoring plans.

#### (3) Conditions of Approval.

Umatilla County may impose clear and objective conditions in accordance with the County Comprehensive Plan, County Development Code and state law, which Umatilla County considers necessary to protect the best interests of the surrounding area, or Umatilla County as a whole.

#### (4) Permits.

Prior to commencement of any construction, all other necessary preconstruction permits shall be obtained, including but not limited to a conditional use permit, e.g. ~~Umatilla County Zoning Permit, and road access and other permits from the Umatilla County Public Works~~

Department, and from the Oregon Department of Transportation and other permits from state agencies with the requisite jurisdiction.

~~(2)~~ (5) Application Requirements.

The following information shall be provided as part of the application, or subject to the County's discretionary authority, be required prior to the construction or operation of the Wind Power Generation Facility through a condition of approval:

(A) (1) A general description of the proposed Wind Power Generation Facility,;

(2) A tentative construction schedule,;

(3) The legal description of the property on which the ~~Wind Power Generation Facility~~ will be located,; and

(4) Identification of the general area for all components of the proposed Wind Power Generation Facility,.

(B) A including a map showing the location of components.

(C) (1) Nonproprietary evidence of wind monitoring data qualifying the wind resources within the project boundary, such as a description of procedures and process for wind study.

(2) Evidence of active utility transmission interconnect requests and/or process and description of same.

(3) Route and plan for transmission facilities connecting the project to the grid.

~~(B)~~ (D) (1) Demonstrate compliance with Section 152.061.

(2) Identify Identification of potential conflicts, if any, with: (1) Accepted farming practices as defined in ORS 215.203(2) (c) and forest practices as provided in ORS 527.620 through 527.990 on adjacent lands devoted to farm uses, and (2) neighboring rural homes. Explain how conflicts could be mitigated and the

steps to mitigate such conflicts, e.g., noise easement. Other resource operations and practices on adjacent lands except for wind power generation facilities on such adjacent lands, and (3) Accepted farm or forest practices on surrounding EFU/GF or NR land, including the nature and the extent of the impact of the proposed facility on the cost of such practices.

~~(E)~~ (E) A Transportation Plan, with proposed recommendations, if any, reflecting the guidelines provided in the Umatilla County Transportation System Plan (TSP) and the transportation impacts of the proposed Wind Power Generation Facility upon the local and regional road system during and after construction, after consultation with Umatilla County Public Works Director. The plan will designate the size, number, location and nature of vehicle access points.

~~(F)~~ (F) An revegetation and erosion control plan, developed in consultation with the Umatilla County Public Works Department, Soil and Water Conservation District, and appropriate Watershed Council. At a minimum, the plan shall the plan should include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation restoration with an appropriate mix of native vegetation or vegetation suited to the area. This requirement will be satisfied if the applicant has an NPDES (National Pollution Discharge Elimination System) permit. The plan shall also address monitoring during and post construction. Reimbursement to agencies for their time on review shall be the responsibility of the developer

~~(G)~~ (G) A fish, wildlife and an avian impact monitoring plan. The avian monitoring plan shall be designed and administered by the Wind Power Generation Facility owner/operator's applicant's wildlife professionals. [See HHH (2), above] For projects being sited by EFSC, compliance with EFSC's avian monitoring requirements will be deemed to meet this requirement. The plan shall include the formation of a technical oversight committee to

review the plan, and consist of the following persons:

- (1) The landowners/farm tenants.
- (2) Wind Power Generation Facility owner/operator representative. (Chair)
- (3) Oregon Department of Fish and Wildlife representative, if the agency chooses to participate.
- (4) Two Umatilla County residents with no direct economic interest in the project and recommended by the applicants for appointment by the Umatilla County Board of Commissioners.
- (5) U.S. Fish and Wildlife representative, if the agency chooses to participate.
- (6) Umatilla County Planning Commission member.

At the request of Wind Power Generation Facility owner/operator applicant, this committee requirement may be waived or discontinued by the County.

~~(F)~~ ~~(H)~~ A fire prevention and An emergency management response plan for all phases of the life of the Wind Power Generation Facility. The plan shall address the major concerns associated with the site, including but not necessarily limited to terrain, dry conditions, and fire hazards, limited access, available water, and emergency response.

(1) The plan shall verify the fire district and/or contract fire department responsible for providing emergency services. High rise rescue is the responsibility of the Wind Power Generation Facility owner/operator with local emergency responders providing ground level assistance.

(2) A spill prevention, control and counter measure plan (SPCC) shall be provided. The plan shall include verification that a local

emergency service provider has equipment, training and personnel to respond to spills.

(3) An Operations and Maintenance Plan detailing expected work force, local response capability (contract or otherwise), controlled access, and in the case of transmission lines proof of emergency response capability in accordance with OPUC rules governing operation and maintenance of such lines.

(4) An Emergency Response Plan for responding to natural and/or man made emergencies or disasters.

~~(H)~~ (I) A weed control plan addressing prevention and control of all Umatilla County identified noxious weeds, directly resulting from the Wind Power Generation Facility during preparation, construction, operation and demolition/~~rehabilitation~~restoration.

~~(H)~~ (J) A socioeconomic impact assessment of the Wind Power Generation Facility, evaluating such factors as, but not limited to, the project's effects upon the social, economic, public service, cultural, visual, and recreational aspects of affected communities and/or individuals. These effects can be viewed as either positive or negative. In order to maximize potential benefits and to mitigate outcomes that are viewed as problematic, decision makers need information about the socioeconomic impacts that are likely to occur.

(K) Information pertaining to the impacts of the Wind Power Generation Facility on:

(1) Wetlands and streams, including intermittent streams and drainages;

(2) Fish, Avian and Wildlife (all potential species of reasonable concern, as well as threatened and endangered species;

(3) Fish, Avian and Wildlife Habitat;

(4) Criminal Activity (vandalism, theft,

trespass, etc). Include a plan and proposed actions, if any, to avoid, minimize or mitigate negative impacts.

(5) Open space, scenic, historic, cultural and archaeological resources as identified and inventoried in the Comprehensive Plan. The applicant shall consult with the Confederated Tribes of the Umatilla Indian Reservation on developing an inventory of these resources.

(L) A dismantling, and decommissioning and restoration plan of all components of the Wind Power Generation Facility, as provided in §152.616 (HHH) (7).

~~(5)~~ (6) Standards/Criteria of Approval.

The following requirements and restrictions apply to the siting of a Wind Power Generation Facility:

~~(A) Setbacks. The minimum setback shall be a distance of not less than the following. The Wind Power Generation Facility shall be on property zoned EFU/GF or NR, and no portion of the facility shall be within 3,520 feet of properties zoned residential use or designated on the Comprehensive Plan as residential. (For clarification purposes of this section; EFU/GF/NR zones are not considered zoned for residential use.)~~

(1) From a turbine tower to a city urban growth boundary (UGB) shall be two miles, unless a city council action authorizes a lesser setback. The measurement of the setback is from the centerline of a turbine tower to the edge of the UGB that was adopted by the city as of the date the application was deemed complete.

(2) From turbine tower to land zoned Unincorporated Community (UC) shall be 1 mile, unless the landowner of the land zoned UC authorizes by written waiver a lesser setback and the waiver is recorded with the county deed records.

(4) From a turbine tower to the boundary

right-of-way of County Roads, state and interstate highways, 110% of the overall tower-to-blade tip height.

Note: The overall tower-to-blade tip height is the vertical distance measured from grade to the highest vertical point of the blade tip.

(5) From tower and project components, including transmission lines, underground conduits and access roads, to known archeological, historical or cultural sites shall be on a case by case basis, and for any known archeological, historical or cultural site of the Confederated Tribes of the Umatilla Indian Reservations the set back shall be no less than 164 feet (50 meters)

(2) New electrical transmission lines associated with the project shall not be constructed closer than 500 feet to an existing residence without prior written approval of the homeowner, said written approval to be recorded with county deed records. Exceptions to the 500 feet setback include transmission lines placed in a public right of way. Note: Transmission and distribution lines constructed and owned by the applicant that are not within the project boundary are subject to a separate land use permit.

~~(E)~~ (3) The turbine/towers shall be of a size and design to help reduce noise or other detrimental effects. At a minimum, the Wind Power Generation Facility shall be designed and operated within the limits of noise standard(s) established by the State of Oregon. A credible noise study may be required to verify that noise impacts in all wind directions are in compliance with the State noise standard.

(B) Reasonable efforts shall be made to blend the wind facility turbine/towers with the natural surrounding area in order to minimize impacts upon open space and the natural landscape.

(C) The development and operation of the Wind Power Generation Facility will include Reasonable efforts to protect and to preserve

existing trees, vegetation, water resources, wildlife, wildlife habitat, fish, avian, resources, historical, cultural and archaeological site.

(D) The turbine towers shall be designed and constructed to discourage bird nesting and wildlife attraction.

(F) ~~(E)~~ Private access roads established and controlled by the Wind Power Facility shall be gated and signed to protect the Wind Power Generation Facility and property owners from illegal or unwarranted trespass, illegal dumping and hunting and for emergency response.

(G) ~~(F)~~ Where practicable the electrical cable collector system shall be installed underground, at a minimum depth of 3 feet; elsewhere the cable collector system shall be installed to prevent adverse impacts on agriculture operations.

(H) ~~(G)~~ Required permanent maintenance/operations buildings shall be located off site in one of Umatilla County's appropriately zoned areas, except that such a building may be constructed on site if:

(1) The building is designed and constructed generally consistent with the character of similar buildings used by commercial farmers or ranchers, and

(2) The building will be removed or converted to farm use upon decommissioning of the Wind Power Generation Facility consistent with the provisions of § 152.616 (HHH) (7).

(I) ~~(H)~~ A Wind Power Generation Facility shall comply with the Specific Safety Standards for Wind Facilities delineated in OAR 345 024 0010 (as adopted at time of application).

(J) ~~(I)~~ A Covenant Not to Sue with regard to generally accepted farming practices shall be recorded with the County. Generally accepted farming practices shall be consistent with the definition of Farming Practices under ORS

30.930. The Wind Power Generation Facility owner/operator applicant shall covenant not to sue owners, operators, contractors, employees, or invitees of property zoned for farm use for generally accepted farming practices.

(J) Roads.

(1) County Roads.

A Road Use Agreement with Umatilla County regarding the impacts and mitigation on county roads shall be required as a condition of approval.

(2) Project Roads.

Layout and design of the project roads shall use best management practices in consultation with the Soil Water Conservation District. The project road design shall be reviewed and certified by a civil engineer. Prior to road construction the applicant shall contact the State Department of Environmental Quality and if necessary, obtain a storm water permit (NPDES).

(K) ~~(J)~~ Demonstrate All Wind Power Generation Facilities must show compliance with the standards found in OAR 660-033-0130 (37).

~~(6) To the extent feasible, the county will accept information presented by an application for an EFSC proceeding in the form and on the schedule required by EFSC.~~

~~(7) (L) Submit a plan for~~ The applicants dismantling of uncompleted construction and/or decommissioning plan for and/or re-powering of the Wind Power Generation Facility shall include the following information: as described in §152.616 (HHH) (7).

~~(M)(8)~~ A surety bond or letter of credit shall be established to cover for the cost of dismantling of uncompleted construction and/or decommissioning of the Wind Power Generation Facility, and site rehabilitation pursuant to (See § 152.616 (HHH) (7) and (8). The intent of this requirement is to guarantee performance (not just provide financial insurance) to protect the public interest and the county budget from

unanticipated, unwarranted burden to decommission wind projects. For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement.

(9) (N) The actual latitude and longitude location or Stateplane NAD 83(91) (suitable for GPS mapping) coordinates of each turbine tower, connecting lines, O & M building, substation, project roads and transmission lines, shall be provided to Umatilla County on or before starting once commercial electrical production begins.

(O) An Operating and Facility Maintenance Plan shall be submitted and subject to county review and approval.

~~(10)~~ (P) A summary of as built changes to the original plan in the facility from the original plan, if any, shall be provided by the Wind Power Generation Facility owner/operator 90 days of starting electrical production.

(Q) Submit a socioeconomic assessment of the Wind Power Generation Facility.

(7) (A) Dismantling/Decommissioning.  
A plan for dismantling and/or decommissioning that provides for completion of dismantling or decommissioning of the Wind Power Generation Facility without significant delay and protects public health, safety and the environment in compliance with the restoration requirements of this section.

~~(B)~~ (A) A description of actions the Wind Power Generation Facility owner/operator proposes to take to restore the site to a useful, non hazardous condition, including options for post dismantle or decommission land use, information on how impacts on fish, wildlife, avian populations and the environment would be minimized during the dismantling or decommissioning process, and measures to protect the public against risk or danger resulting

from post decommissioning site conditions in compliance with the requirements of this section.

~~(C)~~ (B) A current detailed cost estimate, a comparison of that estimate with present funds, the bond set aside for dismantling or decommissioning, and a plan for assuring guaranteeing the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate will be reviewed and be updated by the Wind Power Generation Facility owner/operator on a 3 5 year basis, unless material changes have been made in the overall Wind Power Generation Facility that would materially increase or decrease these costs. If so, the report must be revised within 120 days of completion of such changes.

~~(D)~~ (C) Restoration of the site shall consist of the following:

(1) Dismantle turbines, towers, pad mounted transformers, meteorological towers and related aboveground equipment. All concrete turbine pads shall be removed to a depth of at least three feet below the surface grade.

(2) The underground collection and communication cables need not be removed if at a depth of three feet or greater. These cables at a depth of three feet or greater can be abandoned in place if they are deemed not a hazard or interfering with agricultural use or other consistent resource uses of the land.

(3) Gravel shall be removed from areas surrounding turbine pads.

(4) Private access road areas shall be removed restored by removing gravel and restoring the surface grade and soil, unless the landowner directs otherwise.

(5) After removal of the structures and roads, the area shall be graded as close as is reasonably possible to its original contours and the soils shall be restored to a condition

compatible with farm uses or consistent with other resource uses. Re vegetation shall include planting by Wind Power Generation Facility owner/operator applicant of native plant seed mixes, planting by Wind Power Generation Facility owner/operator applicant of plant species suited to the area, or planting by landowner of agricultural crops, as appropriate, and shall be consistent with the weed control plan approved by Umatilla County.

(6) Roads, cleared pads, fences, gates, and improvements may be left in place if a letter from the land owner is submitted to Umatilla County indicating said land owner will be responsible for, and will maintain said roads and/or facilities for farm or other purposes as permitted under applicable zoning.

~~(8) (E)~~ Decommissioning Fund. The applicant (Wind Power Generation Facility owner/operator) shall submit to Umatilla County a bond or letter of credit acceptable to the County, in the amount of the decommissioning fund naming Umatilla County and the landowner as beneficiary or payee.

~~(A) (H)~~ The calculation of present year dollars shall be made using the U. S. Gross Domestic Product Implicit Price Deflator as published by the U. S. Department of commerce, Bureau of Economic Analysis, or any successor agency (the Aindex.@). The amount of the bond or letter of credit account shall be changed up or down if the change in the Index moves by more than change if the Index changes be increased at such time when the cumulative percentage increase in the Index exceeds 10 percent from the last change, and then the amount shall be increased or decreased by the cumulative percentage increase change. If at any time the Index is no longer published, Umatilla County and the Wind Power Generation Facility owner/operator applicant shall select a comparable calculation of present year dollars. ~~The amount of the bond or letter of credit account shall be pro-rated within the year to the date of decommissioning.~~

~~(B) (2)~~ The decommissioning bond fund shall not be subject to revocation or unjustified reduction before decommissioning of the Wind Power Generation Facility and rehabilitation of the site/s.

~~(C) (3)~~ The Wind Power Generation Facility owner/operator shall describe the status of the decommissioning bond fund in the annual report submitted to the Umatilla County.

~~(F)~~ If any disputes arise between Umatilla County and the landowner on the expenditure of any proceeds from the bond or the letter of credit, either party may request non-binding arbitration. Each party shall appoint an arbitrator, with the two arbitrators choosing a third. The arbitration shall proceed according to the Oregon statutes governing arbitration. The cost of the arbitration (excluding attorney fees) shall be shared equally by the parties.

~~(G)~~ For projects sited by EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with the dismantling and decommissioning requirements of this § 152.616 (HHH)(7) & (8).

~~(9) (12)~~ Annual Reporting.

Within 120 days after the end of each calendar year the Wind Power Generation Facility owner/operator shall provide Umatilla County an written and oral annual report including the following information:

(A) Energy production by month and year.

(B) Non proprietary information about wind conditions, (e. g., monthly averages, high wind events, bursts).

(C) A summary of changes to the Wind Power Generation Facility that do not require facility requirement amendments.

(D) A summary of the fish, wildlife and avian



monitoring program – bird injuries, casualties, positive impacts on area wildlife and any recommendations for changes in the monitoring program.

(E) Employment impacts to the community and Umatilla County during and after construction.

(F) Success or failures of weed control practices.

(G) Status of the decommissioning bond fund.

(H) Summary of erosion control activities and its effectiveness.

(I) (H) Summary comments –

(1) any Problems with the projects, any adjustments needed, or any suggestions.

(2) The annual report requirement may be ~~modified~~ discontinued or required at a less frequent schedule by the County as warranted by project conditions, circumstances and compliance. The reporting requirement and/or reporting schedule shall be reviewed, and possibly altered, at the request of the Wind Power Generation Facility owner/operator. For Wind Power Generation Facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.

(10) (H) (A) Permit Amendments.

The Wind Power Generation Facility requirements shall be facility specific, but can be amended as long as the Wind Power Generation Facility does not exceed the boundaries of the Umatilla County conditional use permit where the original Wind Power Generation Facility was constructed.

(B) An amendment to the conditional use permit shall be subject to the standards and procedures found in §152.611. Additionally, any of the following would require an amendment to the conditional use permit required if proposed facility changes would:

(1) Increase the land area taken out of agricultural production by an additional 20 acres or more; (2) Increase the land area taken out of agricultural production sufficiently to trigger taking a Goal 3 exception; (3) Require an Expansion of the established Wind Power Generation Facility boundaries; (2) ~~(4)~~ Increase the number of towers; (3) ~~(5)~~ Increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to the repowering or upgrading of power generation capacity; or (4) Changes to project private roads or access points to be established at or inside the project boundaries.

(C) In order to assure appropriate timely response by emergency service providers, Notification (by the Wind Power Generation Facility owner/operator) to the Umatilla County Planning Department of changes not requiring an amendment such as a change in the project owner/operator of record, a change in the emergency plan or change in the maintenance contact are encouraged, but not required to be reported immediately. An amendment to a Site Certificate issued by EFSC will be governed by the rules for amendments established by ESC.

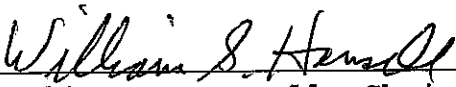
FURTHER by unanimous vote of those present, the Board of Commissioners deems this Ordinance necessary for the immediate preservation of public peace, health, and safety; therefore, it is adjudged and decreed that an emergency does exist in the case of this Ordinance and it shall be in full force and effect from and after its adoption.

FIRST READING: June 14, 2011

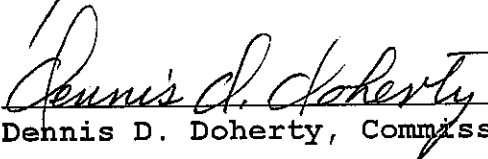
SECOND READING: June 28, 2011

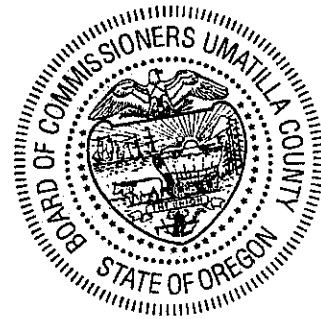
DATED this 28th day of June, 2011.

UMATILLA COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
William S. Hansell, Chair

  
\_\_\_\_\_  
W. Lawrence Givens, Commissioner

  
\_\_\_\_\_  
Dennis D. Doherty, Commissioner



ATTEST:  
OFFICE OF COUNTY RECORDS

  
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Records Officer

