

UMATILLA COUNTY BOARD OF COMMISSIONERS
Work Session of Tuesday, May 3, 2011
9:00 a.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS PRESENT: Dennis Doherty, Larry Givens, Bill Hansell
(Chairman).

ABSENT: None.

COUNTY COUNSEL: Doug Olsen.

STAFF: Tamra Mabbott, Carol Johnson, Gina Miller.

GUESTS: Clinton Reeder, Ed Chesnut, Jeff Newtson.

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NOTE: THE FOLLOWING IS A SUMMARY OF THE WORK SESSION. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Commissioner Hansell called the work session to order at 9:05 a.m.

WORK SESSION:

County Counsel Doug Olsen explained the legal standing of this work session. He stated that the Board was present for a work session, not a public hearing. There would be no public testimony taken today, but the Board could request information as needed.

Commissioner Hansell advised that the hearing would be continued on Tuesday, May 12, 2011 at 9 a.m. in the Media Room of the Umatilla County Justice Center. The record is still open to submit materials for that hearing.

Commissioner Hansell welcomed the panel guests, staff and County Counsel and thanked them for their participation at this work session. The panel guests are Clinton Reeder, representing the Umatilla County Planning Commission, Ed Chesnut, representing the Milton-Freewater City Council, and Jeff Newtson, a local farmer.

Commissioner Hansell commented that there would be two presentations this morning, followed by discussion among the Board of Commissioners and panel, but no decisions would be entertained today.

Commissioner Hansell introduced the ‘Yellow Paper’, a document drafted following meetings with Mr. Reeder and the planning staff. He covered the changes that they made to the draft document from the February 24, 2011 version recommended by the Planning Commission. These changes appear in orange on the ‘Yellow Paper’ document.

Page 1:10; There were no suggestions or changes on this page.

Page 2:10 (1)(A); There is a suggested change to clarify the procedure and add language to clarify that the process applies to county permitted projects only, not those permitted by EFSC (Energy Facility Siting Council).

Page 2:10 (4); Language added to clarify that only state agencies with appropriate and requisite jurisdiction would be involved in the permitting process. Each agency does not need to be separately identified.

Page 3:10 (D)(2); Changes made to clarify that the developer would identify mitigation for both possible impacts to farm and forest lands as well as neighboring rural homes. This replaces language that only identified impacts to rural residences.

Page 3 (F); Language was added to the revegetation and erosion control plan that would be developed in consultation with the Umatilla Public Works Department, Umatilla County Soil and Water Conservation District, and the appropriate watershed council. This eliminates additional agency consultation and adds language that the developer may need to reimburse the agencies for their involvement in the development of the plan.

Page 3:10 (6); Language added back that allows the wind farm owner to request waiving the requirement of a monitoring committee. The request can be made, but that does not guarantee that it will be granted by the county.

Page 4:10 (H)(I); Language was clarified pertaining to noxious weeds. The county has an existing noxious weed list, and they do not need to be individually listed in this chapter.

Page 4:10 (J); Remove Bracket J language, as the SIP agreement now replaces the need for this code.

Page 4:10 (K)(5); New language clarifying the open space, scenic, historic and archeological resources. The applicant will be required to provide information on those resources that are identified in the Comprehensive Plan. This also creates a new category (Bracket 6) that specifically lists resources that are significant to the CTUIR (Confederated Tribes of the Umatilla Indian Reservation). The new bracket also encourages the applicant to work directly with CTUIR on developing an inventory of these resources.

Page 4:10 (K)(L); Change in language pertaining to restoration of project components. The word restoration replaces rehabilitation in this code.

Page 5:10 (K)(1); Major changes in language to setbacks from the Urban Growth Boundary. A setback can be required if requested by a city. This would make the request from the city a recommendation for consideration by the county, but not mandatory. This eliminates the “one size fits all” problem for the cities.

Page 5:10 (K)(2); Homes in the UC (Unincorporated Community) zone are rural homes, and in developing setback consistency for homes in other rural areas, they will have the same setback as rural homes outside the project boundary.

Page 5:10 (K)(3); Setbacks for rural homes within the project boundary will be changed to ½ mile and the rural residence on a neighboring property not leased for towers will be one mile.

Page 5:10 (K)(4); This change combines (4) and (5) so setbacks from county roads, state or interstate highways will be the same standard as applied by EFSC. This standard of a setback of 110% of the overall blade tower-to-tip height provides safety and operational protection.

Page 5:10 (K)(65); Change to a setback of 110% of the overall blade tower-to-tip for known archeological and cultural sites, unless a lesser setback is recommended by CTUIR. Setbacks from other archeological sites such as the Oregon Trail are included in this change.

Page 5:10 (C); This language specifies CTUIR as the Native American Tribe.

Page 6:10 (J)(2); Remove the words ‘independent’ and ‘civil engineer’, as they are vague and confusing. Certification by a civil engineer should not require another “independent” civil engineer review.

Page 8:10 (D)(4); Re-worded to clarify how private access roads will be restored after the project is retired.

Commissioner Hansell concluded his presentation and introduced Clinton Reeder to make his presentation.

Mr. Reeder stated that the heart of the conflict is the contest between those who want the most towers possible and those who don’t want any at all. The challenge is to find a way to recognize the interests of both groups. He will focus on the setback issue, but will also explore the growing health affects issue. Mr. Reeder commented that he is not ignoring the economics of the issue, nor the community benefits provided by wind. His charge has been to understand the process from a human side and consider the impact to community relationships. As a member of the Planning Commission, he strives to represent the interests of all the citizens of the county, both for and against wind projects.

Mr. Reeder discussed his letter to the Board of Commissioners, dated May 3, 2011. He had been asked by the Planning Commission to clarify that the recommended 2-mile setback was not designed to limit or stop wind development. It was meant to empower the adjoining landowner who did not want towers near their property. The property owner could either negotiate a noise easement with the developer or choose not to waive this right at all. The Planning Commission also wants the public to be well informed, so Mr. Reeder asked that all the materials he has provided, including the two tool kits, be added to the record. The Planning Commission also seeks to address the issue of health effects to people living near wind projects, and to protect the rights of property owners who don't want wind development near their property.

Mr. Reeder stated that the Planning Commission also wanted to address the adequacy of the EFSC siting standards, with a quarter mile setback. All wind developers want a quarter mile setback, while other individuals want a larger setback. There is a significant difference between what the developers want and what the property owners living near the projects want. He discussed whether or not the noise standards can be trusted as a setback standard, and referenced an e-mail from Iberdrola Renewables. Mr. Reeder stated that the newer issue of adverse health effects must also be considered and researched thoroughly, and addressed in the county siting standards. He explained the decibel measurement system and how it works. It is a logarithmic scale on a base of 10.

Mr. Reeder discussed the setbacks from roads and buildings. He commented that the ice throw distance from a wind tower has been measured as far as 1,600 feet. A ten pound block of ice coming off the blade tip traveling more than 100 M.P.H. would have greater momentum and potential for damage than the standard of 1.5 times the height of the tower would allow for. The risk increases with the height of the tower for debris fields. He recommended a setback of 2-3 times the blade height for a safety boundary to address ice throw and possible debris from a damaged blade.

Mr. Reeder referenced a book written about adverse medical effects caused by wind energy projects, written by Dr. Nina Pierpont. He described the author, and the content of the book and how it related to the topic at hand. The book is about symptoms experienced by people that lived near wind towers that did not seem to have a definable cause. There has been a significant increase in the amount of attention and information available since 2005 about the adverse health effects of wind towers on people. There was an international symposium in 2010 held in Ontario, Canada on relating wind power to adverse human health effects. In February 2011, Australia hosted a national inquiry relative to wind power and health issues. Awareness is growing both locally and internationally about this issue, and it is not going away. He feels that this is something that should not be ignored by the county during this process.

Noise standards are being addressed differently now than they were 10 years ago. Mr. Reeder compared the 'wind turbine syndrome' to the 'sick building syndrome' and the similar symptoms associated to them. The low frequency noise that is produced by fans (A/C, airplane engines, and fan-based equipment) has been identified as a cause of health

impairment by medical measuring devices available today. These devices determine the effects that this particular stimulus has on the human brain. Sound has been shown to interrupt Stage 2 sleep without the person even knowing it, leaving the person less rested and vulnerable to other deprivation symptoms. Mr. Reeder stated that it won't be long until there are workplace laws in place that will regulate the exposure people have to low frequency noise on the job. He described the physiological effects on the human body caused by low frequency noise.

Mr. Reeder referenced Page 9 of the summary he submitted to the Board of Commissioners, on the topic of property value guarantees. The developer guarantees the property value to the property owner for a short period of time to determine if the property owner can tolerate living near the wind project. If they cannot tolerate the conditions, they can exercise the property value option with the developer and the developer buys the property from them, and they can move elsewhere. This practice is being used in other areas of growing wind development. The community challenge will be to determine how to mitigate the effects of a wind projects on the population when there is a relatively small percentage of rural property owners directly affected.

Mr. Reeder discussed Exhibit F. He proposed a two-mile mitigation boundary; any person living within two miles would be eligible for property value mitigation payment on a sliding scale basis. Using linear proximity as the basis for the scale, the closer the property to the wind project, the higher the mitigation payment would be. The values would be figured based on pre-project appraised property values.

Mr. Newtonson asked Mr. Reeder if his presentation was based on his personal opinion about the topic, or was he representing the Planning Commission. Mr. Reeder replied that the concept of a mitigation boundary was the only personal idea he presented, the balance of his presentation was derived from the recommendation approved by the Planning Commission. The Planning Commission had charged him to deliver the message that they stand behind their recommendation of a two-mile setback made to the Board of Commissioners. Mr. Reeder also advised that he had been asked by the Board of Commissioners to provide additional input on this topic. He stated that this is a matter of global concern and he has done his best to assemble information that reflects current concerns, risks and impacts.

Commissioner Doherty stated that he had requested a list of all public hearings and work sessions that have been held to date on the topic of wind development in Umatilla County. The work began in August 2008 and there have been 16 work sessions or public hearings where wind development has been reviewed since that time. He clarified that Mr. Reeder is here to represent the Planning Commission's effort in their recommendation. Mr. Reeder stated that he has read every page of testimony from all the hearings and work sessions, over 3000 pages of internet information and all of the information submitted by the developers.

Commissioner Givens commended Mr. Reeder and the Planning Commission for their efforts. He agreed that health effects must be discussed, but he wants to ensure that the environmental impacts are addressed as well. This is an area of great concern for a large community of people as well. The decision made on this issue will affect everyone in the county to some extent. It will be a tough decision to balance health, wildlife, and money and not everyone will be happy with the outcome.

Mr. Chesnut stated that he was present to represent the City Council of Milton-Freewater, and their interests. He also sits on the Walla Walla Basin Watershed Council as a board director, and wanted to share concerns from that agency as well. He is a member of the Blue Mountain Alliance, a group that is interested in improving the siting standards for Umatilla County for wind development. He wanted to make it clear that he is not authorized to change the stance of the three groups he is representing, nor can he negotiate on their behalf. He would like to identify the middle ground, where business needs and private property owner rights are protected on both sides.

Mr. Newtonson stated that he is a landowner in the Juniper Canyon area and wants wind development on his property. He is upset that the idea of negative health effects is being thrown around and states that he can find just as many internet articles that debunk the claims that wind development can cause negative health effects. He stated that the information needs to be factually based, with data to back up the claims. He hopes they thoroughly review the information before making a decision that affects the citizens of Umatilla County.

Commissioner Hansell called for a brief recess at 10:10 a.m. The work session was reconvened at 10:27 a.m.

Commissioner Hansell stated that they will be working from the proposal submitted by the Planning Commission from the February 24th draft, Mr. Reeder's supplemental data, and the 'Yellow Paper' drafted by Commissioner Hansell.

Commissioner Hansell went over the February 24th draft page by page.

Page 1:10; No changes on this page.

Page 2:10 (1); Under the county permitting procedure, this was broke out to bracket A and added "county procedural requirements" language to the ordinance. Mrs. Mabbott explained that EFSC is required by state statute and administrative rule to consider, but not necessarily follow, the county's requirements. EFSC has a different procedure to follow for applicants and they do not have a timeline to adhere to like the county does for processing applications.

Mr. Chesnut asked about the language in the new Bracket (1)(A) being very similar to the prior language in Chapter (1). Commissioner Hansell explained that they wanted to

break this out for clarity purposes, and to identify that this referred to procedural requirements and not siting standards.

Page 2:10 (4); The language of “state agencies with requisite jurisdiction” was added to also clarify the intent of the ordinance. Mrs. Mabbott explained that state agencies are required to respond to applications, but may not have staffing available to do so. This language will memorialize this requirement, without naming specific state agencies.

Page 2:10 (5)(D); A sentence was added to address conflict mitigation for farming practices and neighboring rural homes. Mrs. Mabbott explained that this language was more specific about mitigation requirements on rural homes, but is also true for farming practices. This allows for flexibility to the developer to explain what kind of mitigation they would propose in the application. Mrs. Mabbott reviewed the pre-application and application process. Staff and developers review maps for their proposed development, and identify what information needs to be a part of the application. Agencies are identified that would need to be involved in mitigation. Each project is different from the next project, and the size of the project may establish the level of detail required in the application requirements accordingly. Discussion followed on using “could be” versus “may be” in the ordinance language. Mr. Reeder commented that the setbacks will not establish the mitigation; they identify the boundaries of the conflict.

Page 3:10 (F); Mr. Reeder commented that the Oregon Department of Agriculture (ODA) is charged by state statute to deal with erosion from rural land and enforce the Clean Water Act. The Soil and Water Conservation District (SVCD) is the local management and enforcement agency for that state law. Commissioner Hansell asked if the applicant were to work with the local district, would that be enough. Mr. Reeder explained that the ODA has to sign off any application. Discussion followed on the role of the local district along side the ODA.

Mr. Chesnut asked about the reimbursement language, and should the Soil and Water Conservation District be added to the reimbursement list. Mr. Reeder clarified that the ordinance requires the applicant to consult with the SWCD on their plan, not to create the plan. Commissioner Givens indicated that monitoring would indicate action required, and this would result in staff time and expense. Commissioner Hansell stated that the intent of the reimbursement requirement was to help other agencies with costs if the county required their involvement in a developer’s application process. The developer would be required to reimburse other agencies for their participation in the application process. Mr. Chesnut asked that the Walla Walla Watershed Council be added to this reimbursement list. Discussion followed on what agencies should be on the list, and if there needs to be a list. Commissioner Doherty commented that if agencies were reimbursed for their consultant participation, they would be proactive and provide good information. This process shifts the cost away from the agency to the developer/applicant and ensures good cooperation from the agency. Mr. Reeder commented that the SWCD has the enforcement ability, supported through the ODA.

Mr. Newton asked why the National Pollution Discharge Elimination System Permit (NPDES) was eliminated from the language. Mr. Reeder explained that the Department of Environmental Quality (DEQ) has limited monitoring of pollution discharge only during the construction phase of the project. There is no further monitoring by DEQ of the project site post-construction, but the threat still remains of siltation and erosion from access and maintenance roads throughout the wind projects. ODA would be the agency to provide post-construction enforcement of any silt or erosion complaints and impacts to the watershed. The land owner and developer are responsible for any damage to the watershed.

Mrs. Mabbott stated that during the October 2010 work session with the Planning Commission and natural resource agencies, it was learned that the DEQ did not provide monitoring for the NPDES permit once construction is completed. The ODA and SWCD permit for the farming and the roads and the DEQ permits for the turbines during the construction period. The new language in the ordinance addresses this. Mr. Reeder commented that the Walla Walla Watershed Council has spent millions of dollars correcting damage done to the Walla Walla River by siltation caused by the past management practices, and they do not want to see this progress threatened. The Endangered Species Act states that even the threat of siltation in the watershed would result in a violation of this act.

Mr. Newton commented that he sees this language as being additional red tape to the developers, and it bothered him. Mr. Chesnut explained that it has been established that any new road is a primary contributor to siltation and erosion, so that is why this language is vital to the ordinance. Other state and federal natural resource agencies have similar rules for best management practices in place. The biggest concern is that developers are looking to develop projects in very sensitive water shed areas, so this is even more reason to have this language in place.

Page 3:10 (G) (6); Mr. Chesnut commented that his question about this change had already been answered. He wanted to highlight that even if the developer were to ask to waive the monitoring committee, that decision would still be up to the county. Commissioner Doherty asked what the minimum size would be for a project to be considered a commercial energy facility. Mrs. Mabbott replied it would be 1 megawatt. Anything larger than 105 megawatts would be processed by EFSC. Commissioner Doherty asked if this language would overburden the smaller projects with procedural requirements. Mrs. Mabbott replied that she didn't think so, as the county has already successfully processed two such applications for smaller projects. The Planning Commission considers the smaller projects under a Conditional Use Permit (CUP) process and decides what agencies need to be consulted and how much detail needs to be submitted. The Planning Commission can choose to waive requirements for avian and wildlife studies based on the size and location of the project.

Commissioner Doherty asked about the monitoring plan for avian and wildlife studies and Mrs. Mabbott confirmed that information would be reviewed during the annual

reporting process required of each project. Mrs. Mabbott explained that the technical oversight committee remained in existence for the life of the project, under the current code. Mr. Reeder stated that he has served on three of the monitoring committees for wind projects in Umatilla County and has reviewed the requirements for pre-construction monitoring and post-construction monitoring. There is a growing interest in the cumulative effects and impacts to avian and wildlife populations. Umatilla County has a large migration path for bats running through it. This information became known as the result of one of these monitoring committees. Commissioner Givens commented that there have been times when the Planning Commission did require additional information from developers based on the pre-construction monitoring reports.

Commissioner Doherty expressed concern that any on-going monitoring required by county ordinance would not over-extend the county resources. Mr. Reeder explained that the developer is responsible for providing the monitoring data, and that the county has not incurred any financial obligations for this. Mrs. Mabbott asked if there should be clarification in the code that it is the developer's responsibility to pay for any annual monitoring. She also pointed out that the current code does not give the county any enforcement power or regulatory authority, should the annual reporting process reveal problems with unreasonable avian or wildlife mortality rates or impact. Mr. Chesnut commented that the Blue Mt. Alliance is troubled with the developer providing the monitoring data, and likened it to the "fox guarding the henhouse". Commission Givens commented that another problem is when a research company providing the monitoring data is being paid by the developer. They will not want to provide data that reflects negatively on the company paying their cost. Discussion followed on the merits of having the developer pay for annual monitoring or requiring an independent third party to provide the data. Mr. Chesnut commented that the requirement for annual avian and wildlife monitoring should not be waived, as it is essential to the preservation of the sensitive areas in Umatilla County. Mr. Reeder stated that this current annual review process has worked well up until now, with minimal financial impact to the county.

Page 4:10 (I); Commissioner Hansell stated that this language was changed because Umatilla County has an established noxious weed list, and the weeds do not need to be listed separately in this code. Commissioner Doherty asked for clarification on the words 'direct' and 'indirect', pertaining to this section of the code. Mrs. Mabbott explained that they didn't want to make the developers responsible for weeds on adjoining lands that resulted from another land owner not maintaining adequate weed control on their property. This new language narrows the responsibility of the developer and land owners. Discussion followed on the liability or responsibility of noxious weeds control.

Commissioner Doherty asked about using the word 'restoration' instead of 'rehabilitation'. Mr. Reeder explained that this is the language used by EFSC in their standards. He stated that restoration better defines the intent of what the code is meant to describe. It was decided to use 'restoration' on a consistent basis throughout the ordinance.

Page 4:10 (J); Mr. Chesnut commented that he understood the SIP process as a way to identify additional tax incentives for developers and how money will be distributed to the areas affected by the wind projects. It has nothing to do with any pre-construction studies to determine if the project should be built or not. The city of Milton-Freewater is extremely concerned about the socio-economic impacts to the view shed and the growing industry of vineyards and wineries there. The wine industry is currently producing \$53,475.00 per acre of community benefit to the Milton-Freewater area, and they are committed to protecting this for the community. The City of Milton-Freewater supports the requirement of a socio-economic impact study as part of the permitting process for wind development, but the Watershed Council would like to see an environmental impact statement produced. Commissioner Doherty stated that he concurs with this sentiment, and also feels that the SIP process comes too late in the overall process to adequately evaluate the socio-economic impact. He stated that the SIP process is not a sufficient replacement for the socio-economic impact study.

Commissioner Hansell commented that the socio-economic study was felt to be too subjective to be effective. Mrs. Mabbott stated that it is the county's goal to make application requirements and standards clear and objective. Sometimes this does not happen, and that is why there is a Planning Commission and an appeal process in place. She stated that the socio-economic standard could be seen as subjective, as it is not clear to the applicant if they have met the criteria or not. This presents a challenge to all involved parties.

Commissioner Doherty commented that there is a high level of tension in the county pertaining to the benefits and downfalls of wind development. There needs to be a way of determining the down side of having wind development here and what can be done about it. Mrs. Mabbott stated that if this were to be an application requirement, it would have to be matched with a standard and a purpose. If a socio-economic standard is required, there needs to be a statement that this is to be used as a tool to assess community consensus. Mr. Reeder stated that there needs to be clear and objective standards and criteria to avoid appeals and lengthy consideration of applications. The Planning Commission is not trying to bypass the socio-economic study, but find a way to acknowledge the impact exists and to create specific requirements for information so clear and objective standards and criteria can be established. Developers are asked to identify potential conflicts with surrounding farming practices and rural homes, and suggest mitigation measures.

Mr. Chesnut commented that the city is concerned about the devaluing of property and business in the city and the Urban Growth Area if wind development were allowed to be too close. Commissioner Givens agreed that a socio-economic study is very hard to define, but stated that the potential impact to tourism is a valid concern and it needs to be addressed in the ordinance.

Mr. Newtonson commented that the SIP payments have been very helpful to their communities, and he feels the SIP process is a good idea.

Commissioner Doherty stated that Deschutes County had to deal with this issue several years ago, and they decided not to allow wind development in their county because of the overall negative impact to their tourism industry. He also stated that the farming economy is changing, and this will affect how land owners will lease their property to wind developers. He wants to make sure that there is a place in the process to evaluate and deal with the long term economic changes.

Mr. Reeder commented that they are not just putting wind towers up, they are making semi-permanent changes to the character of the neighborhood by allowing an industrial overlay on farm ground and this will forever alter the character of the zone. Commissioner Doherty asked Mr. Reeder what he suggested could be done in anticipation of these long range problems. Mr. Reeder suggested that a cumulative effects analysis should be completed. There is sufficient historical information on affected wildlife and communities to start looking at the long range effects to make better short term decisions.

Mr. Newtonson commented that it is not the county's job to level the playing field, and it's the American way of doing business. Commissioner Doherty stated that this issue cannot be wrapped up in the American flag. It is the governmental responsibility to protect the public, and they should not make a rush to judgment. The commissioners need to know that their decision will be good for the people for 25 years and more. He supports taking a broad look at this issue, as there are both up and down sides to it. Commissioner Doherty supports the socio-economic study being a part of the siting standards, so they can start heading off these emerging problems. Commissioner Hansell stated that the requirement for a socio-economic study will be left in the code. Commissioner Givens stated that there will always be farmers who have an advantage over others for many different reasons, and this should not be tied to wind development. Mr. Chesnut commented that the large property owners who want to have wind development on their land should not be allowed to trample over the rights of the smaller land owners. Mrs. Mabbott asked for clarification that the socio-economic study requirement will be re-inserted into the ordinance.

Mr. Chesnut stated that the Blue Mt. Alliance, the Watershed Council and the City of Milton-Freewater all feel that current proposed language adequately addresses the potential for development along the face of the Blue Mountains. This region is a unique environmental area, and should not be considered under the Columbia Plateau eco-region guidelines.

Mr. Reeder suggested a special overlay zone for the Blue Mountains for development standards that are different from the rest of the county. He stated that if the ordinance were to require a socio-economic study, it would have to be clear what they hoped to accomplish with the information. Commissioner Doherty stated that he was open to options for a socio-economic study that will help them address the concerns being raised. Mr. Reeder explained that there is a trend in this part of the county to capitalize on

smaller farms, and the face of the Blue Mountains is a unique region with different emerging issues.

Mr. Chesnut commented on the goals described in the EFU ordinance, specifically the goal to protect open spaces and how this is enforced. Mrs. Mabbott read aloud from the EFU ordinance and the description of purpose for the EFU zone. Mr. Chesnut stated that if the open spaces are not inventoried, there is no way to protect this resource. Mrs. Mabbott explained that there is a separate set of standards under Goal 5 for the protection of significant resources. These would be considered by the Planning Commission on a case by case basis, on how these resources would be mitigated.

Commissioner Doherty stated that Mr. Chesnut's comments reflected the crux of the conflict and that their challenge is to find a way to capture the benefits of the wind industry without compromising or defeating other values in the process. He supports the overlay zone idea for the Blue Mountains that have enhanced standards for development in the sensitive areas. Mrs. Mabbott explained that Goal 5 resource inventories were identified nearly 30 years ago and are listed in the counties technical report or comprehensive plan.

Mr. Newton asked who made the decision on what is a protected Goal 5 resource. Mr. Reeder explained the process of designating a Goal 5 resource and the state standards that must be met in order to do this. Discussion followed on the inventories of Goal 5 resources in Umatilla County.

Mr. Reeder requested that the word "these" be added back into the suggested language after the word "of" and before the word "resources", so the sentence would read; "The applicant is encouraged to work with CTUIR on developing an inventory of these resources". Mr. Chesnut stated that he was fine with this change, but still was not comfortable with the opening sentence language being limited when referring to open and scenic resources. He would prefer to see this resource inventoried to ensure adequate protection.

Page 5:10 (K)(L); Commissioner Hansell explained that the word restoration has replaced the word rehabilitation for the sake of consistency with state language throughout the ordinance. Mrs. Mabbott confirmed that EFSC stated similar standards for decommissioning.

Page 5:10 (A)(1); Commissioner Hansell explained that the proposal cited in the "Yellow Paper" states that the setbacks from a city urban growth boundary would not be specified unless a specific setback was requested by that city.

Mr. Chesnut commented that the City of Milton-Freewater would not be comfortable with this language. They are not comfortable with having to "request" a setback, with no guarantee that they will receive this setback standard. They support the Planning Commission proposed standard of a 2 mile setback. Discussion followed on how the different cities regard wind development near their city limits. There is great concern

from Milton-Freewater that wind projects could be built too close to the Urban Growth Boundary, thus limiting their potential to expand the city limits in the future. Discussion followed on what language could protect the city and still offer flexibility on requesting larger setbacks.

Page 5:10 (A)(2); Commissioner Hansell read the proposed language for Unincorporated Communities (UC). Mrs. Mabbott clarified what areas of the county this includes; Reith, Umapine and Meacham. Mr. Newton asked where the 1 mile standard came from. He suggests using the EFSC decibel system for setbacks. Mr. Chesnut stated that the issue is not only noise, but visibility, health impacts and property values. Discussion followed on the definition of the zone UC (Unincorporated Community), and what establishes the boundary. Mr. Reeder asked if they could combine (2) and (3) as being the same standard. Discussion followed on how combining these two standards would affect vacant lots of UC zoned property. It was decided that it would be just the same as a rural home setback standard.

Page 5:10 (A)(3); Mr. Reeder asked about the language, "within the project boundary." He asked if this meant a property that will have a tower or will not have a tower. If the property owner has a lease with a wind developer and signs the waiver, will this affect the setback. Discussion followed on leased properties versus non-leased properties, and how this will affect the setback standard. Mr. Reeder stated that the intent of this language was to let the property owner who chooses to be closer to a tower than the setback distance sign a waiver. Mrs. Mabbott clarified that the project boundary is a subset of the leased properties. The noise study area is different from this boundary and will most likely exceed the leased property areas. This specific setback standard does not address the noise boundary.

Commissioner Hansell stated that if the property owner is going to lease their property to a developer, they could sign the waiver to allow smaller setbacks. But if an adjacent land owner did not want the towers near them, they could refuse to sign the waiver. Discussion followed on leased properties that do not have a residence. Mr. Newton stated that some property owners in the project boundary are not receiving payments, and this should not be in the language.

Mr. Chestnut stated that the 1 mile setback for this section of the ordinance is not acceptable to a significant portion of county residents. They support the 2 mile setback as proposed by the Planning Commission, and feel this will serve to better protect their rural living environment.

Page 5:10 (A)(4); Commissioner Hansell stated that the intent of this language was to have a uniform state/interstate highways setback for roads thru the county. Mr. Reeder stated that there is no documentation to support the 110% of the overall tower-to-blade tip height setback for roads, but he did find data to show 1600 feet as more in line with adequate safety measures. A 1600 foot setback would equate to 3 times the current proposed language of 110% times the blade height.

Page 5:10(A)(5); Commissioner Hansell explained that this language applied the same standard of 110% of the overall tower-to-blade tip height for cultural resource setbacks for CTUIR sites. Discussion followed on state cultural resource setbacks.

Mr. Chesnut asked about setbacks for tower placement in regards to actual property lines. He stated that there is no clear, defined setback in the language that clarifies how far back a tower should be from a property line. There should be some sort of physical setback for safety reasons. Discussion followed on property line setbacks. Mr. Olsen stated that there is a remedy for an adjoining landowner if a tower should fall across a property line and do damage to the adjoining property. The landowner with the tower and developer would have the liability to protect the adjoining landowner.

Page 6:10 (C); Commissioner Hansell explained that the wording was changed to clarify the significant tribal landmarks and to specifically recognize the CTUIR and their ceded territory in our area. Mr. Newton commented that he preferred the previous language, and felt that the “will protect” language was too rigid. Discussion followed on what language should be used and what the intent was behind the language. Commissioner Hansell suggested keeping “will protect” and adding “with reasonable effort” to the language. Commissioner Givens asked if the language would open the situation to possible litigation.

Commissioner Doherty asked for clarification of the word “facility”. Mrs. Mabbott explained that this term was inclusive of all the components to a wind project; the towers, substations, pads, and transmission lines within the project boundaries. Discussion followed on using consistent terminology throughout the ordinance.

Commissioner Doherty asked why the annual reporting requirement was being named separately in Section (C). Mrs. Mabbott explained that there has been significant concern over the last several years from different groups about impact to wildlife and avian resources. This language may be redundant, but was kept in the proposed ordinance to address these concerns and memorialize the need for these annual reports. Mr. Olsen added that mitigation measures were added in this proposed language as well. Mr. Reeder commented that this language was added to the proposal as a result of public concern expressed over the years. Discussion followed on this section. Commissioner Hansell and Commissioner Doherty asked the Planning staff to offer options about this bracket, and to try to add the language, “reasonable effort”, back into the proposed draft.

Page 6:10 (J)(2); Commissioner Hansell read the proposed changes on the project roads section. The language, “independent civil engineer”, was removed from the proposal. Mr. Chesnut commented that it is important to have good roads, because they can be large contributors to siltation, and wind projects add many miles of roads. Mr. Reeder asked if the developers were using local engineers who know the area or are they using their own staff members for this task. They need additional input from wind developers about this draft proposal. Mr. Olsen confirmed that the county can be more restrictive on

project roads. The land owner can retain the roads after the project is completed, but the roads must continue to meet the county road standards.

Commissioner Hansell asked if there were any other issues that needed to be discussed during the work session.

Mr. Chesnut commented that the Watershed Council has been working for a decade to find a cooperative way to handle the problems with endangered species in the Walla Walla River basin. Their efforts have been recognized nationally by other watershed councils, and they want to ensure that they remain in compliance with federal regulations. They hope that this ordinance will help them protect the sensitive area they have worked so hard to restore. Mr. Chesnut also noted that cumulative effects should be addressed in the proposed ordinance, along with the endangered species act. He is concerned that the rush to develop wind projects because of the tax incentives has not left much consideration of environmental impact issues.

Mr. Newtonson commented on the draft proposal Section (A)(7), Setbacks. He asked if this proposed standard was trying to make the county ordinance more stringent than the noise standard established by the state. He wants to know what is meant by credible noise study, and what the purpose for the noise study is. Mr. Reeder replied that this requirement is a way to determine if the projected noise standards are satisfied by the finished product. Mrs. Mabbott further clarified that this requirement of modeling was to ensure that the standard would be met, prior to project construction. She cited another county that did not have this modeling requirement, and found that a wind project submitted inaccurate information and did not comply with the noise standard after the project was built. This language was added to prevent this same thing from happening in Umatilla County. The industry standard is to complete a noise study prior to construction. Mrs. Mabbott commented that credible meant the study should be completed by someone who has verifiable credentials and expertise in this industry. The burden of providing the credible noise study is meant to be placed on the developer and not on the affected landowner after the fact.

Mr. Reeder recommended that a noise study should be required for all wind development projects sited in Umatilla County. Many of the conflict issues that have come out of this process have been due to the noise concerns, and this would be very useful information to have on record.

Mr. Chesnut expressed concern over the credibility of noise studies that are submitted with applications, and asked who would be conducting the studies. If the modeling is not correct, and the project is built, it will be very difficult to move the towers after the fact. He states that the two-mile setback will help solve this problem, if the noise study proves to be inadequate at protecting the rural home owners. The two-mile setback is an easily identifiable standard prior to construction.

Commissioner Hansell asked if there were any further comments, and no one responded. He stated that the hearing will be reconvened on May 12, 2011. All materials submitted

to date will be submitted into the record at that time, and further public testimony will be heard. The goal will be to close the record then, so the Board of Commissioners can begin to review the substantial amount of materials submitted. There is no deadline for a decision, as this is a legislative action. He stated that the decision they make will have long term effects, so they need to make the best decision they can.

Commissioner Hansell thanked the panel members for their participation in the work session. Commissioner Givens asked people to provide their input on this issue to the Board of Commissioners. He encouraged people to try and work together, and not let this process become a punitive tool against neighbors.

Commissioner Hansell adjourned the work session at 1:29 p.m.

Respectfully submitted,

Gina Miller, secretary

(adopted by the Board of Commissioners on June 14, 2011)