
CONDITIONAL USES

Sub-Sections

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§ 152.610 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CONDITIONAL USES. Activities that are similar to other activities permitted within a zone, but are not entirely compatible with the permitted uses or purpose and intent of the zone, or compatible with surrounding land uses on adjacent lands in another zoning district.

LAND USE DECISION. Includes a final decision by a local government concerning the adoption, amendment or

application of the statewide planning goals, a comprehensive plan provision, a land use regulation or a new land use regulation. (A Land Use Decision does not include: (1) a decision of a local government which is made under land use standards which do not require interpretation or the exercise of policy or legal judgment; (2) a decision of a local government which approved or denies a building permit issued under clear and objective land use standards.) (Pursuant to ORS 197.015 (10)) (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 152.611 NEW OR ALTERED CONDITIONAL USES; CONFORMANCE WITH REQUIREMENTS; PERFORMANCE BONDS.

(A) Conditional uses listed in this chapter may be permitted, enlarged or altered contingent upon appropriate authorization, in accordance with the standards and procedures set forth in this subchapter.

(B) In permitting a new conditional use or the alteration of an existing conditional use, the appropriate planning authority may impose conditions, which are considered necessary to protect the best interests of the surrounding area or the county as a whole.

(C) In the case of a use existing prior to the effective date of this chapter and classified in this chapter as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements for a conditional use.

(D) The county may require an applicant to furnish the county with a performance bond or such other form of assurance that the county deems necessary to guarantee development in accordance with the standards established and conditions attached in granting a conditional use. (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 152.612 PROCEDURE FOR TAKING ACTION ON A CONDITIONAL USE APPLICATION.

The procedure for taking action on a conditional use or land use decision application shall be as follows:

(A) A property owner or the Planning Commission may initiate a request for a conditional use by filing an application ~~with the secretary of the Planning Commission,~~ using forms prescribed pursuant to § 152.767;

(B) A conditional use and land use decision application shall be processed via administrative review per § 152.769;

(C) A conditional use permit or land use decision will not be approved unless the proposed use of the land will be in conformance with the County Comprehensive Plan;

(D) An applicant granted a conditional use permit or land use decision must obtain a county zoning permit [for each tax lot](#) before commencing construction, ~~unless~~ [waived by the Planning Director](#);

[\(E\) A conditional use or land use](#)

[decision may be referred to the Umatilla County Planning Commission if the Planning Director deems circumstances warrant such additional review and consideration.](#)

(Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 152.613 TIME LIMIT ON A CONDITIONAL USE PERMIT.

(A) A conditional use permit shall be void after one year or such lesser time as the permit may specify unless 20% of the total estimated project cost has occurred or the proposed use has occurred. However, the Planning Director or the proper planning authority may extend authorization for an additional period not to exceed one year, on request from the applicant. The total time allowed shall not exceed two years from the original approval date.

(B) If delay in establishing the use is demonstrably due to a delay by a state or federal agency in issuing a required permit, at no fault of the applicant, the Planning Director or a Designee of the Planning Director may extend the time limit imposed by division (A) of this section for a period not to exceed one year following issuance of the state or federal agency permit. The applicant shall establish that state or federal permits have not yet been issued, and that the delay has not been caused by the applicant.

(C) Time Limitation on Transportation-Related Conditional Use Permits. Authorization of a conditional use shall be void after a period specified by the applicant as reasonable and necessary based on season, right-of-way

acquisition, and other pertinent factors. This period shall not exceed three years. (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 152.614 LIMIT ONE APPLICATION.

No application for a conditional use permit shall be considered within one year of the denial of such a request, unless in the opinion of the Hearings Officer, Planning Director or the appropriate planning authority new evidence or a change of circumstances warrant it. (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 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. (Ord. 83-4, passed 5-9-83; Ord. 2005-02, passed 1-5-2005)

§ 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) The procedure for taking action on the siting of a facility is a request for a conditional use. A public hearing pursuant to Sections ~~152.750 -755 and~~ 152.771 shall be held to determine if the applicant meets the siting requirements for a Wind Power Generation Facility. The requirement for a hearing will not apply to proposed facilities for which EFSC is making the land use decision.

[Former # (2) moved to # (5)]
New→# (2) A pre-application meeting 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 expertise in natural resources, to participate. 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.

(3) 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) 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. other permits from state agencies.

~~(2)~~ (5) Application Requirements.
The following information shall be provided as part of the application:

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

(2) ~~A~~ a tentative construction schedule;

(3) ~~T~~ the legal description of the property on which the facility will be located; and

(4) ~~I~~ identification of the general area for all components of the proposed Wind Power Generation Facility;

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

(C) (1) Evidence of wind monitoring data qualifying the wind resources within the project boundary,

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

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

~~(B)~~ (D) Identification of potential conflicts, if any, with: (1) Accepted farming or ranching practices as defined in ORS 215.203(2) ~~(e)~~ on adjacent lands devoted to farm uses; (2) Other resource operations and practices on adjacent lands ~~except for including~~ 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.~~

~~(C)~~ (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.

~~(D)~~ (F) A fish, wildlife and avian impact monitoring plan. The avian monitoring plan shall be designed and administered by the applicant's wildlife professionals; contents and duration of the study shall be recommended by a technical oversight committee. ~~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) 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 applicant, this committee requirement may be waived or discontinued by the County.~~

[Former (2) (E) moved to (6) (I)]

~~(F)~~ (G) A fire prevention and emergency management response plan for all phases of the life of the facility. The plan shall address the major concerns associated with the terrain, dry conditions; and fire hazards, limited access, and water quality as needed, addressing both normal and extraordinary conditions.

(1) The plan shall identify the fire district or fire department and verify that the district/department has the appropriate

equipment, training and personnel to respond to fires, spills and high rise rescue. If the local fire district or department does not have adequate high rise rescue capability, the applicant shall provide a plan for providing such in case of an emergency.

(2) A spill prevention control and counter measure plan(SPCC) shall be provided.

(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.

~~(G)~~ (H) An revegetation and erosion control plan, developed in consultation with the Umatilla County Public Works Department, Soil and Water Conservation District, Watershed Council, the Oregon Agricultural Water Quality Management Program (administered by the Oregon Department of Agriculture), the Department of Environmental Quality and the Confederated Tribes of the Umatilla Indian Reservation. At a minimum, the plan should include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation 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 should also address monitoring during and post construction.~~

~~(H)~~ (I) A weed control plan addressing prevention and control of all Umatilla County identified noxious weeds and other weeds such as thistles which distribute weed seed while blowing across nearby land s following maturity, directly resulting from the Wind Power Generation Facility during preparation, construction, operation and demolition/rehabilitation.

~~(I) 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.~~

[New (6) (J) below moved from (2) (K)]

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

- (1) Wetlands and Streams;
- (2) Fish, Avian and Wildlife (all potential species of reasonable concern), including but not limited to federally listed 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.

[New (5) (K) below moved from (2) (L)]
~~(K)~~ (K) A dismantling and decommissioning 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 facility:

(A) Setbacks.

~~(1) The Wind Power Generation Facility shall be on property zoned EFU/GF or NR, and n~~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.)

(2) Turbine/towers shall not be constructed closer than one half mile of an existing residence unless a written waiver is obtained from the landowner that shall be recorded with deed records.

(3) 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 deed records. Note: Transmission and distribution lines constructed and owned by the applicant what are not within the project boundary are subject to a separate land use permit.

(4) Public Safety.

Turbine/towers must be setback from any public roadway a minimum distance of two times the overall total tower-to-blade tip height.

~~(5)~~ (5) The turbine/towers shall be of a size and design to help reduce noise or other detrimental effects. At a minimum, the facility shall be designed and operated within the limits of noise standard established by the State of Oregon. A noise study may be required to verify downwind noise impacts are in compliance with the noise standard.

(B) Reasonable efforts shall be made to blend the wind ~~facility=s~~ 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 Facility will ~~Reasonable efforts shall be taken to~~ protect and ~~to~~ preserve existing trees, vegetation, water resources, wildlife, wildlife habitat, fish, avian ~~or~~ and other significant natural resources. Compliance with this standard may require mitigation and/or submission of an annual monitoring report.

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

[Former (5) (E) was moved to (6) (A) (5)]

~~(E)~~ (E) Private access roads established and controlled by the Wind Power Facility shall be gated to protect

the facility and property owners from illegal or unwarranted trespass, and illegal dumping and hunting.

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

(2) ~~T~~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).

~~(H)~~ (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).

[New (6) (I) below, moved from (2) (E)]

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

(2) Layout and design of the project roads shall be reviewed and approved by the county.

[New (6) (K) below, moved from (2) (J)]

~~(J)~~ (K) 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 of the Wind Power Generation Facility shall include the following information: as described in §152.616 (HHH) (7).~~

[New (6) (M) below, moved from # (8)]

~~(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 facility, and site rehabilitation pursuant to (See § 152.616 (HHH) (7) &(8)). 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.~~

[New (6) (N) below, moved from # (9)]
~~(9)~~ (N) The actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, connecting lines, and transmission lines, shall be provided to Umatilla County within 90 days of starting ~~once commercial~~-electrical production ~~begins~~.

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

[New (6) (P) below, moved from (10)]
~~(10)~~ (P) A summary of as built ~~changes in the facility from the original plan, if any,~~ shall be provided by the owner/operator.

[New (7) below was formerly (7) (A)]
~~(7)~~ (A) A plan for dismantling and/or decommissioning that provides for completion of dismantling or decommissioning of the 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 facility owner 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.

~~(E)~~ (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 the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate will be reviewed and be updated by the facility owner/operator on a 5 year basis, unless material changes have been made in the overall facility that would materially increase 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) Access roads shall

be removed by removing gravel and restoring the surface grade and soil.

(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 applicant of native plant seed mixes, planting by 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.

[New # (8) below was formerly (7) (E)]

(8) ~~(E)~~ The applicant (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 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 by the cumulative percentage increase. If at any time the Index is no longer published, Umatilla County and the 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 reduction before decommissioning of the Wind Power Generation Facility ~~-and rehabilitation of the site/s.~~

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

(D) ~~(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.

(E) ~~(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).

[Former # (8) moved to (6) (M)]

[Former # (9) moved to (6) (N)]

[Former # (10) moved to (6) (P)]

[New # (9) below, moved from # (12)]

(9) ~~(12)~~ Within 120 days after the end of each calendar year the facility owner/operator shall provide Umatilla County an 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 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 comments –

(1) ~~any P~~problems with the projects, any adjustments needed, or any suggestions.

(2) The annual report requirement may be discontinued or required at a less frequent schedule by the County. The reporting requirement and/or reporting schedule shall be reviewed, and possibly altered, at the request of the facility owner/operator. For facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.

[New # (10) below, moved from # (11)]

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

(B) An amendment to the conditional use permit shall be subject to the standards and procedures found in § 152.611. Additionally, an amendment shall be required if the 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~~ Expand of the established 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; (4) Changes to any project roads or access points to

be established at or inside the project boundaries.

Notification by the facility owner/operator to the Umatilla County Planning Department of changes not requiring an amendment are encouraged, but not required. An amendment to a Site Certificate issued by EFSC will be governed by the rules for amendments established by EFSC.

[# (12) moved to # (9)]

(Ord. 83-4, passed 5-9-83; Ord. 2002-02, passed 5-20-2003; Ord. 2005-02, passed 1-5-2005; Ord. 2009-09, passed 12-8-09)