FORM 2

DLCD Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP

☐ In person ☐ electronic ☐ mailed

COPY

For Office Use Only

Jurisdiction: **Umatilla County**

Local file number: **T-12-046**

Date of Adoption: **9/17/2012**

Date Mailed: **9/20/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 5/21/2012

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amending Section 152.616(HHH) of the Umatilla County Dev elopment Code and establishing standards for an adjustment to the two (2) mile setback between wind turbine tower and rural residences. Text is included in the attached Findings of Fact.

Does the Adoption differ from proposal? Yes, Please explain below:

Adopted version varies only slightly, primarily to clarify the definition of rural residence and to clarify date of establishment of a dwelling for purposes of applying for an setback adjustment.

Plan Map Changed from: to:

Zone Map Changed from: to:

Location: **county** Acres Involved:

Specify Density: Previous: New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☒	☒	☐	☐	☐	☐	☐	☐	☐	☐	☒	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing? ☒ **Yes** ☐ **No**

If no, do the statewide planning goals apply? ☐ **Yes** ☐ **No**

If no, did Emergency Circumstances require immediate adoption? ☐ **Yes** ☐ **No**

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

COPY

Local Contact: **Tamra Mabbott** Phone: **(541) 278-6246** Extension:

Address: **216 SE Fourth Street** Fax Number: **541-278-5480**

City: **Pendleton** Zip: **97801-** E-mail Address: **tamra@co.umatilla.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)

per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Amending Development Code for Wind Power Generation Facility Allowing for Adjustment Criteria for Rural Residence Setbacks	)))))	ORDINANCE NO. 2012-13

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 on February 28, 2012, the Board of Commissioners adopted Order No. BCC2012-020, initiating an amendment to Section 152.616 (HHH) allowing for adjustment criteria for rural residence setbacks for wind power generation facilities;

WHEREAS a work session was held on May 4, 2012, involving representatives from a number of stakeholders, for a review of the initiated proposal, and a consensus adjustment criteria was recommended to the Umatilla County Planning Commissioner for consideration;

WHEREAS the Umatilla County Planning Commission held a public hearing regarding the proposed amendments on July 19, 2012 and forwarded the proposed amendment, with a minor wording change, to the Board of Commissioners with a recommendation for adoption;

WHEREAS the Board of Commissioners held a public hearing on August 16, 2012, to consider the proposed amendments and voted to approve the amendments to the section revisions.

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, (Strikethrough text is deleted; Underlined/Italicized text is added):

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

(HHH) Commercial Wind Power Generation Facility.

(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:

(1) From a turbine tower to a city urban growth boundary (UGB) shall be two miles. 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.

(3) From a turbine tower to a rural residence shall be 2 miles.

For purposes of this section, "rural residence" is defined as a legal, ~~conforming~~ *existing single family* dwelling ~~existing~~ *meeting the standards of UCDC 152.058(F)(1)-(4), or a rural residence not yet in existence but for which a zoning permit has been issued,* on a unit of land *not a part of the wind power generation facility,* ~~at the time an~~ *on the date a wind power* application is *submitted* ~~deemed complete~~. *For purposes of this section, the setback does not apply to residences located on properties within the wind power generation facility project application*. The measurement of the setback is from the centerline of the turbine tower to the center point of the rural residence.

(4) A Wind Power Generation Facility applicant may apply for and receive an adjustment for a reduced distance between a turbine tower and a rural residence under the following approval criteria. The adjustment application shall be submitted on a form provided by the county and signed by the rural residence landowner.

A. The adjustment will not significantly detract from the livability of the subject rural residence. This standard is satisfied if applicable DEQ noise standards are satisfied, there is no significant adverse impact to property access and traffic conditions, and other evidence demonstrates that the residence remains suitable for peaceful enjoyment or, such impacts to the livability of the rural residence resulting from the adjustment are mitigated to the extent practical; and

B. All other requirements of the Wind Power Generation Facility application remain satisfied.

(5) An adjustment application under this section shall be processed as a Land Use Decision concurrently with the Wind Power Generation Facility application. For applications subject to Energy Facility Siting Council (EFSC) jurisdiction, an adjustment application shall be included as the applicable substantive criteria evaluated by EFSC when granting or denying an application for a Site Certificate.

(~~4~~6) 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.

(57) 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)

(68) 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.

(79) 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.

FURTHER the Board of Commissioners finds and orders that the adoption of this ordinance is supported by the Findings and Conclusions signed and approved under separate document.

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.

DATED this 16th day of August, 2012.

UMATILLA COUNTY BOARD OF COMMISSIONERS

W. Lawrence Givens

W. Lawrence Givens, Chair

Dennis D. Doherty

Dennis D. Doherty, Commissioner

BOARD OF COMMISSIONERS UMATILLA COUNTY STATE OF OREGON

William S. Hansell, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Records Officer

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR UMATILLA COUNTY

In the Matter of a Text Amendment Initiated by the Umatilla County Board of Commissioners (the "Board") to Amend Umatilla County Development Code ("UCDC") Section 152.616 Establishing Standards for Adjustments to the Two (2) Mile Setback from Wind Turbine Towers to a Rural Residence on a Recommendation for Approval, as Amended, by the Umatilla County Planning Commission	**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RECOMMENDING APPROVAL OF A LEGISLATIVE TEXT AMENDMENT**

1. Introduction.

The Umatilla County Planning Commission (the "Planning Commission") has considered and recommended that the Board approve a legislative text amendment to UCDC 152.616 establishing standards for adjustments to the two-mile setback between wind turbine towers and rural residences. The Board previously adopted UCDC section 152.616 establishing the two-mile setback between wind turbine towers and rural residences and providing that the setback could be waived by the consent of a rural residence owner. The Oregon Land Use Board of Appeals ("LUBA") in *Cosner v. Umatilla County*, _____ Or LUBA ____ (LUBA Nos. 2011-070/071/072, January 12, 2012) remanded the Board's approval of this approval delegation provision, holding that the County could not delegate to individuals the power to waive the setback standard. LUBA noted in its opinion at slip op 8, n 3, as follows, in relevant part: "Of course, the county could avoid any delegation issue at all by simply providing for a code variance process for the county to determine a lesser setback, based on code variance standards of some kind."

Pursuant to LUBA's remand, the Board, in a regularly scheduled and properly noticed public hearing, considered the matter of the remand and, among other actions, in Board Order BCC 2012-020 (February 28, 2012), initiated a Text Amendment to the UCDC text to provide for an adjustment process to the two-mile setback and directed that the Planning Commission consider the text amendment in a public hearing. The Board also established a committee (the "Committee") to recommend language to the Planning Commission. The Planning Director selected the Committee members. The Committee met on May 4, 2012 and recommended certain language to the Planning Commission.

2. Procedural Matters.

A. Categorization of this Application.

This matter is a legislative matter because it proposes to create a new UCDC provision.

B. Post-Acknowledgment Amendment.

This legislative text amendment is an amendment to the County's acknowledged land use regulations, the UCDC. ORS 197.610(1) and OAR 660-018-0020(1) require that the County provide notice to the Director of the Oregon Department of Land Conservation and Development ("DLCD") thirty-five (35) days prior to the initial evidentiary hearing. Thirty-five (35) days prior to the originally scheduled June 28, 2012 Planning Commission initial evidentiary hearing is May 24, 2012. The May 4, 2012 Planning Commission Work Session was not the first hearing. OAR 660-018-0010(1)(f). The record before the Planning Commission includes a copy of the County's notice to DLCD on DLCD's form with a copy of the proposed text amendment and the proposed findings attached. The County has satisfied ORS 197.610(1) and OAR 660-018-0020(1) by mailing the post-acknowledgement amendment notice so that it arrived at the office of the Director of DLCD 35 days prior to the initial evidentiary hearing. The Planning Commission continued the initial evidentiary hearing from June 28, 2012 to July 19, 2012.

UCDC 152.771(B) requires that the County provide a legal notice of the June 28, 2012 hearing by publication in a newspaper of general circulation in the County for at least ten days prior to the date of the hearing. The record includes a copy of the hearing notice published in the *East Oregonian* newspaper on July 7, 2012.

The Board finds that the County has satisfied the post-acknowledgement amendment notice required by ORS 197.610(1) and OAR Chapter 660-018-0020(1) and the legal notice of hearing publication in UCDC 152.771(B).

C. Legislative Text Amendment Procedure.

UCDC 152.752 is entitled "Public Hearings on Amendments." This section provides, in relevant part, "The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures in section 152.771 of this Chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission will be final unless appealed, except in the case where the amendment is to the text of this Chapter, and the Planning Commission shall forward its recommendation to the Board of Commission for final action."

Additionally, UCDC 152.771(A)(1) provides that a public hearing is required for legislative amendments to the text of the UCDC. Because this matter is legislative, the Board finds that the procedures and requirements for a quasi-judicial hearing are not applicable to this hearing. Therefore, UCDC 152.772, which applies to quasi-judicial hearings, is not applicable to this legislative proceeding.

3. Board Initiation of Text Amendment.

UCDC section 152.750 is entitled "Authorization to Initiate Amendments." This section provides, in relevant part, "An amendment to the text of this Chapter or to a zoning map may be initiated by the County Board of Commissioners, the County Planning Commission, or by application of a property owner."

Board Order BCC2012-020, a document that was physically before the Planning Commission at its public hearing on July 19, 2012, and is, therefore, part of the record in this matter, shows that the Board properly initiated the Text Amendment pursuant to UCDC section 152.750. The Planning Commission had the authority to consider the Text Amendment. The Planning Commission found that the initiation pursuant to UCDC Section 157.750 allowed it to recommend different language for adoption to the Board instead of the language initiated because neither the UCC nor the Board order prohibited the Planning Commission from doing so.

4. Description of Changes to the Text Amendment.

The Board considered and initiated an amendment to the text of the UCDC to provide for standards for an adjustment to the two-mile setback requirement. An adjustment is not a variance. The Committee recommended adjustment language considered by the Planning Commission was as follows:

A. Amendment to Definition of Rural Residence.

"For purposes of this section, 'rural residence' is defined as a legal, single family dwelling existing (or for which an application has been submitted in good faith) on a unit of land at the time an application is submitted, and located on land not a part of the wind power generation facility. For purposes of this section, the setback does not apply to residences located on properties within the wind power generation facility project application. The measurement of the setback is from the center line of the turbine tower to the center point of the rural residence."

B. Adjustment Criteria.

"(4) The Wind Power Generation Facility applicant may apply for and receive an adjustment for the reduced distance between a turbine tower and a rural residence under the following approval criteria. The adjustment application shall be submitted on a form provided by the County and signed by the rural residence's landowner.

A. The adjustment will not significantly detract from the livability of the subject rural residence. This standard is satisfied if applicable DEQ noise

standards are satisfied, there is no significant adverse impact to property access and traffic conditions, and other evidence demonstrates that the residence remains suitable for peaceful enjoyment or, such impacts to the livability of the rural residence resulting from the adjustment are mitigated to the extent practicable; and

B. All other requirements of the Wind Power Generation Facility application remain satisfied.

(5) An adjustment application under this section shall be processed as a Land Use Decision concurrently with the Wind Power Generation Facility application. For applications subject to Energy Facility Siting Council (EFSC) jurisdiction, an adjustment application shall be included as the applicable substantive criteria evaluated by EFSC when granting or denying an application for a Site Certificate."

The Planning Commission recommended approval of the above language to the Board with the deletion of the words "in good faith" in the definition of Rural Residence.

The Board approved the Planning Commission recommended text amendment but with the inclusion of option four. The adopted language is shown on pages 16 and 17 of these findings.

Umatilla County Development Code Section 152.616(HHH)(6)(a)(1)-(3) and (HHH)(6)(a)(6)-(9) are not part of the ordinance adopted by the Board in this legislative text amendment and were, therefore, not before the Planning Commission and Board in this matter.

5. Planning Commission Hearing.

The Planning Commission opened the initial evidentiary hearing on the Text Amendment on July 19, 2012. A quorum of the Planning Commission was present with seven (7) members present. No party objected to the jurisdiction of the Planning Commission.

Chair Randall opened the public hearing. Planning Director Mabbott provided the staff report to the Planning Commission. Chair Randall then opened the public hearing for testimony. Five (5) persons testified. Nicole Hughes, representing Element Power, submitted a three (3) page letter dated July 16, 2012 in which she requested changes to the proposed Text Amendment. Steve Corey, representing the Cunningham Sheep Company, submitted a four (4) page letter dated May 4, 2012 in which he proposed certain changes to the proposed Text Amendment. Both letters are part of the record of this matter.

Two (2) main issues were before the Planning Commission. The first issue was whether a rural residence should be subject to the two-mile setback standard if only an application for a rural residence had been submitted, whether the application for the rural resident should be approved, or whether a zoning permit for the residence must have been issued. If an unapproved rural residence application is subject to the two-mile setback, then the issue was whether the application was made "in good faith." Ms. Hughes and Mr. Corey testified that more than just an application for a rural residence should be required in order for a rural residence to be subject to the two-mile setback standard. They also testified, as did other witnesses, that if an application for a rural residence is all that is required to make the rural residence subject to the setback, then the modifying language "in good faith" should be deleted.

The second issue was whether all rural residences should be subject to the setback or whether only habitable residences should be subject to the standard. If habitability is included, several witnesses argued that the replacement dwelling standards in UCDC 152.058(F)(1)-(4) should be used to determine the habitability of the rural residence. This UCDC provision implements an Oregon Revised Statute ("ORS") and an Oregon Administrative Rule ("OAR").

Chair Randall closed the public hearing following public testimony. Commissioner Williams moved to recommend that the Committee recommended Text Amendment be recommended for approval to the Board. Commissioner Rhinehart seconded the motion. The motion failed by a vote of 4-3.

Commissioner Reeder then moved to recommend that the Committee recommended Text Amendment be recommended for approval to the Board but with the deletion of the words "in good faith". Commissioner Standlee seconded the motion. This motion passed by a vote of 5-2.

Chair Randall adjourned the public hearing.

6. Board of County Commissioners Hearing.

The Board opened the public hearing on the Text Amendment on August 16, 2012 with a quorum being present and all three (3) members present. No party objected to the jurisdiction of the Board. Chair Givens announced the rules for the conduct of the legislative hearing.

The Planning Director presented the staff report. The Board identified the documents before them consisting of the record. The entire Board packet containing the Planning Commission record was physically before the Board. The Board identified the Board packet as Exhibits 1 through 10 corresponding to each of the bullet points in the Board packet cover page. The Board also identified the following exhibits as part of the record:

- Letter dated August 14, 2012 from Dana Perkins as Exhibit 11.

- Letter dated August 15, 2012 from Elaine Albrich representing Element Power as Exhibit 12.

- Letter dated August 16, 2012 from Bruce White representing Jim Hatley as Exhibit 13, including eight exhibits (Exhibits 1 through 9, except Exhibit 6 which was not physically before the Board. The exhibits total 50 pages).

- Email from Rebecca Heise dated August 16, 2012 as Exhibit 14.

- Letter from Dave Price dated August 16, 2012 as Exhibit 15.

- Letter from Debbie Kelley and Richard Jolly representing Blue Mountain Alliance dated August 15, 2012 as Exhibit 16.

- Written testimony from Cindy Severe dated August 16, 2012 as Exhibit 17.

The Planning Director placed proposed revised language for the text amendment on an overhead screen before the Board and the public.

The Board opened the public hearing for testimony. Nine (9) persons testified. Following public testimony, the Board closed the public hearing. No party raised a procedural objection. No party asked that the public hearing be continued.

The Board deliberated on the text amendment. Commissioner Doherty described his goal for the text amendment as certainty and flexibility. Commissioner Doherty stated that he believed it was necessary to find a balance in the process and liked proposed option four described in the memorandum to the Board (Exhibit 1, August 8, 2012 memorandum to Tamra Mabbott). Commissioner Hansell agreed with Commissioner Doherty, stating he also wanted certainty, flexibility and the ability to implement the two-mile setback standard with adjustments. He stated that he preferred option four, also. Finally, Chair Givens stated that he also liked option four.

Option four referred to in the public testimony and by the Board member is contained in Exhibit 1, August 8, 2012 memorandum to Tamra Mabbott. The memorandum proposed four options to the Board. Option four provided: "To include existing rural residences if they meet the replacement dwelling standards and proposed rural residences not yet in existence but for which a zoning permit has been issued on the date a wind power application is submitted."

Commissioner Doherty moved to accept the Planning Commission recommendation with the amendment that option four be included in the text amendment as appropriate and that the findings be revised to reflect the Board's tentative decision. Commissioner Hansell seconded the motion. The motion carried by a vote of 3-0.

Chair Givens adjourned the public hearing.

7. Approval Criteria.

UCDC 152.751 requires that an amendment to the text of the UCDC shall comply with provisions of the Umatilla County Comprehensive Plan (the "Plan"), the Oregon Transportation Planning Rule (the "TPR"), OAR Chapter 660, Division 12, and the Umatilla County Transportation Plan (the "Transportation Plan"). The Planning Commission also finds that because this text amendment is a post-acknowledgment amendment, ORS 197.175(1) requires that the text amendment satisfy applicable Statewide Planning Goals (the "Goals") and other applicable Oregon Administrative Rules. The Board finds that the UCDC does not contain substantive standards for an amendment to the UCDC text. The remainder of this section addresses the applicable approval criteria.

A. Applicable Statewide Planning Goals.

There are nineteen (19) Goals. The Board finds that only Goal 1, "Citizen Involvement," Goal 2, "Land Use Planning," and Goal 12, "Transportation," are relevant to this application.

(a) ***Goal 1. "Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."***

Finding: The Board finds that the County has an acknowledged citizen involvement program. The citizen involvement program is implemented through UCDC Chapter 152. The public has two *de novo* opportunities to testify on this text amendment.

The Board finds that Goal 1 is satisfied.

(b) ***Goal 2. "Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to ensure an adequate factual basis for such decisions and actions."***

Finding: Goal 2 requires that County land use actions be consistent with the County's comprehensive plan. Goal 2 also requires that the County's action on this text amendment be coordinated with affected governmental entities, as coordination is defined in ORS 197.015(5). Further, Goal 2, Guideline C.1 requires that the County have an adequate factual base for its decision adopting the text amendment.

The Board finds as follows on each requirement of Goal 2. First, the Board finds that the record contains evidence that the County has given notice of the application to affected governmental entities including, but not limited to, the County Road Department, the Oregon Department of Transportation ("ODOT"), and other special districts that might be affected by this application. Coordination requires that the affected governmental entities be provided with the proposed text amendment, given a reasonable opportunity to comment, and that the County incorporate their comments as much as is reasonable. The record reflects that the County has followed the coordination requirements.

The Board also finds that there is an adequate factual base in the record for the text amendment. The factual base is that the Board wants to provide an opportunity for setbacks to the two-mile standard between wind turbine towers and rural residences. The Board directed that the Planning Commission consider an adjustment process so that where an adjustment application is made and substantial evidence shows that the adjustment criteria is satisfied, the two-mile setback may be reduced. The Board finds that an adjustment process for the two-mile setback is warranted because otherwise the two-mile setback might be inappropriate in certain instances.

The Board finds that Goal 2 is satisfied.

(c) ***Goal 12. "Transportation. To provide and encourage a safe, convenient and economic transportation system."***

Finding: The Board finds that this text amendment will not adversely affect the County's transportation system. The proposed criteria for an adjustment includes a requirement for a finding that before an adjustment can be granted, that there be "no significant adverse impact to . . . traffic conditions." The Board further finds that the text amendment in and of itself will have no impact on the County's transportation system, and that any impacts that might occur as a result of an adjustment to the 2 mile setback standard must not be "significant," or, if so, that they be mitigated to the extent practicable.

The Board finds that this Goal is satisfied.

B. Applicable Oregon Administrative Rules.

The Board finds that the only applicable administrative rule is the TPR. OAR 660-012-0060(1) requires that amendments to acknowledged land use regulations be reviewed to determine whether there is a "significant affect" on affected transportation facilities. OAR 660-012-0060(2) provides that the significant affect for non-failing transportation facilities may be mitigated and OAR 660-012-0060(3) provides that there is no significant affect where a failing facility is not made worse by the text amendment.

The Board takes notice of LUBA's decision in *Waste Not Yamhill County v. Yamhill County*, ____ Or LUBA ____ (LUBA No. 2011-091, April 5, 2012). LUBA held in *Waste Not Yamhill County* that a text amendment that does not create trips cannot have a significant affect. The Board finds that this text amendment does not create additional vehicle trips on the County's transportation system and, therefore, it complies with OAR 660-012-0060(1) because the text amendment does not have a significant affect. Therefore, the Board finds that mitigation under OAR 660-012-0060(2) is not required.

C. Applicable Plan Policies.

The Board finds that there are two (2) relevant plan chapters, Chapter 4, "The Planning Process" and Chapter 5, "Citizen Involvement."

(a) Chapter 4, "The Planning Process"

Policy 1: "Evaluate plan and implementing measures every two years, and where significant changes affect policies, initiate the amendment process."

Finding: The Board finds that this policy is satisfied for the following reasons. First, an adjustment is an implementing measure for the Plan as described in Goal 2, "Land Use Planning." The Board finds that a significant change affecting policy has occurred because of the Board's direction to provide citizens and wind power applicants with the opportunity to submit an adjustment application to deviate from the 2 mile setback standard. Therefore, Policy 1 calls for an amendment to the implementing measures. The amendment in this case is the adoption of adjustment language providing for criteria for deviation from the 2 mile setback standard.

The Board finds that this policy is satisfied.

(b) Chapter 5, "Citizen Involvement"

(1) ***Policy 1: "Provide information to the public on planning issues and programs, and encourage citizen input to planning efforts."***

Finding: The Board finds that Chapter 5, Policy 1 is satisfied because of the publication of notice of the Board hearing in a newspaper of county-wide circulation and because there are two (2) *de novo* hearings where the public may testify on the proposed text amendment.

The Board finds that this policy is satisfied.

(2) ***Policy 5: "Through appropriate media, encourage those County residents' participation during both city and County deliberation proceedings."***

Finding: The Board finds, as explained above, that the publication of notice of the Board hearing in a newspaper of county-wide circulation fulfills this requirement.

The Board finds that this policy is satisfied.

8. Findings Responding to Testimony to the Board.

A. August 13, 2012 Letter from Dana Perkins.

Ms. Perkins testified that she supported option four. The Board finds that none of the other statements in Ms. Perkins' written testimony require the Board to adopt additional findings.

B. August 16, 2012 Email from Rebecca Heise.

Ms. Heise's testimony did not raise any issues that require additional findings.

C. Testimony of Dave Price.

Mr. Price submitted oral and written testimony to the Board.

Mr. Price asked that the record before the Board be "re-examined." The Board declined to re-examine the record, finding that all documents were properly before and not excluded by the Planning Commission and were properly before the Board.

Mr. Price testified that he supported the text amendment submitted by the Committee to the Planning Commission. Mr. Price testified about the difference between proposed and as-built turbines, the area of a rural residence, suggested that "deemed complete" language should apply to rural residences not yet in existence but for which an application has been submitted, and asked the Board to require a pre-application meeting with notice to surrounding property owners.

Mr. Price also testified that the Planning Commission erred by not allowing additional testimony in certain instances. The Board finds that to the extent Mr. Price raises a procedural issue that occurred at the Planning Commission hearing, the Board's *de novo* hearing cures any procedural error.

Mr. Price testified that a proposed turbine layout does not always match the final turbine layout. The Board finds that this issue is not a basis for a decision on the adjustment. To the extent the proposed location of a wind turbine does not meet the approved location, the County has the authority to require the as-built location to match the approved location.

The Board also finds that "when deemed complete" is not the appropriate time for a rural residence application to be considered under the proposed text amendment. The language adopted by the Board provides that a rural residence not yet in existence for which a zoning permit has been issued *at the time a wind turbine application is submitted* is the appropriate point at which to consider a future rural residence subject to the two-mile setback for several reasons. First, ORS 215.427(3) provides that the approval criteria are those in effect when an application is submitted provided it is later made complete. The Board finds that a zoning permit issued on or before the submittal date of a wind turbine application is consistent with the certainty that it desires for the text amendment. Second, the Board finds that a zoning permit identifies the precise location of a rural residence and thus provides certainty to both the wind turbine applicant and the rural residence property owners as to whether a two-mile setback applies in a particular situation.

D. Testimony of Debbie Kelley.

Ms. Kelley testified that the Blue Mountain Alliance supported the Planning Commission recommendation to the Board. The Board finds that additional findings are unnecessary to respond to her testimony.

E. Testimony of Cindy Severe.

Ms. Severe testified that she supports the committee recommendation to the Planning Commission. The Board finds that additional findings are unnecessary to respond to Ms. Severe's testimony.

F. Testimony of Greg Shannon.

Mr. Shannon testified that he supported the two-mile setback, but does not support any adjustments. The Board finds that additional findings are unnecessary to respond to Mr. Shannon's testimony.

G. Testimony of Nicole Hughes Representing Element Power.

Ms. Hughes testified that she supported option four. The Board finds that additional findings are unnecessary to respond to her testimony.

H. Testimony of Sara Parsons Representing Iberdrola Renewables.

Ms. Parsons testified that she supported the adjustment provision but noted that the requirement that the rural residence owner sign the adjustment application form required landowner consent and thus the proposed text amendment was not consistent with LUBA's decision in *Cosner v. Umatilla County.* As explained below, the Board finds that requiring a property owner's signature on a county application form is not inconsistent with LUBA's decision in *Cosner v. Umatilla County* and is not an improper delegation of *decisionmaking authority* to a party other than the County for the reasons explained in "J", below.

I. Testimony of Steve Corey.

Mr. Corey testified, without waiving his testimony on the two-mile setback, that he supported option four. He testified that options one, two and three do not provide certainty. However, Mr. Corey testified that he did not believe making a rural residence not yet in existence subject to the two-mile setback was appropriate. He testified that he wanted only existing rural residences to be subject to the two-mile setback.

Mr. Corey raised the issue of livability in his May 4, 2012 letter. The word "livability" is found in Section B(4)(A) of the proposed text amendment. The Board finds there is no legal standard prohibiting the use of "livability" as part of the adjustment criteria.

Mr. Corey argued that the language recommended by the Committee to the Planning Commission was contrary to Goal 5's administrative rule found in OAR 660-023-0190. The Board finds that Goal 5 is not relevant to this matter because this text amendment concerns only an adjustment process. To the extent a party wished to argue that Goal 5 was relevant to the two-mile adjustment process, the party had to have done so in *Cosner v. Umatilla County* under the "Law of the Case" doctrine. Having failed to do so, the issue is now waived.

To the extent the "Law of the Case" doctrine does not apply because Mr. Corey's testimony responds to a new issue, the Board finds that Goal 5 and its administrative rule are not implicated by this legislative text amendment. First, the Board finds that the text amendment does not change the Goal 5 program. Second, the Board notes that it re-adopted findings in an ordinance addressing the Goal 5 issue raised in *Cosner v. Umatilla County* and the Goal 5 issue was properly raised in that context and not in this process. The Board further finds that the Goal 5 administrative rule is not relevant to this application because this legislative text amendment adds only an adjustment process that does not limit or prohibit its significant energy resources.

Mr. Corey also testified that it was a mistake to retain a two-mile setback from urban growth boundaries and a one-mile setback from unincorporated rural communities. The Board finds that these provisions are not part of the text amendment.

J. Written Testimony of Bruce White.

Mr. White did not appear personally before the Board but instead submitted written testimony. The Board finds as follows in response to Mr. White's issues.

Mr. White argued that the adjustment application requires the consent of the owners of rural residences. Without agreeing with Mr. White, the Board finds that this is irrelevant to the remand issue in *Cosner v. Umatilla County.* LUBA found in *Cosner v. Umatilla County* that the County could not delegate *decisonmaking authority* to someone other than the County. Whether a rural residence owner is willing to sign an application form is not a delegation of decisionmaking authority. Moreover, there are many instances where an application may not be submitted until certain jurisdictional requirements have been met, such as a mandatory pre-application or neighborhood meeting and where land owner signatures are required before an application may be submitted, such as a city street or county road vacation. The Board rejects this issue as the basis to decide this text amendment.

Mr. White argues that the text amendment is inconsistent with Plan Open Space Policy 42(a). The Board finds that the text amendment is not inconsistent with Plan Open Space Policy 42(a). Plan finding 42 states: "Alternative energy resources should be explored more fully in Umatilla County." Plan Open Space Policy 42(a) provides: "Encourage development of alternative sources of energy." The Board makes two (2) findings on this Plan Policy. First, the Plan Policy is not a mandatory approval criteria but it is instead a guideline because it uses the word "encourage." Second, even if it were a mandatory approval criterion, the Board finds that this legislative text amendment to allow adjustments to the two-mile setback standard does encourage development of alternative sources of energy, such as wind energy, because it increases the likelihood that wind turbine will be located in the County in the event they cannot meet the two-mile setback.

Mr. White also argued that the text amendment is inconsistent with Plan Energy Conservation Policy 1.

The Board finds that the proposed legislative text amendment is not inconsistent with Plan Energy Conservation Policy 1. Energy Conservation Finding 1 states: "Escalating costs of depleting non-renewable energy sources make renewable energy source alternatives (e.g. solar, wind) increasingly more economical, and help conserve existing energy supplies." Plan Energy Conservation Policy 1 states: "Encourage rehabilitation/weatherization of older structures and the utilization of locally feasible renewable energy resources through use of tax and permit incentives." First, the Board finds that Plan Energy Conservation Policy 1 is a guideline and not mandatory because it uses the word "encourage." Second, the Board finds that the Policy is inapplicable to this legislative text amendment because the Policy's language is directed towards rehabilitation of older structures and tax policies to encourage energy conservation. The Board finds that this legislative text amendment has nothing to do with the subject of Plan Energy Conservation Policy 1.

Mr. White argued that the text amendment is inconsistent with Plan Economy of the County Policy 1. The Board finds that the proposed legislative text amendment is not inconsistent with Plan Economy of the County Policy 1. Plan Economy of the County Policy 1 provides: "Encourage diversification within existing and potential resource-based industries." The Board finds that this policy is not a mandatory approval standard because it uses the word "encourage" and it is a guideline. Second, the Board finds that the topic of Policy 1 is not relevant to the legislative text amendment.

The Board also finds that the proposed legislative text amendment is not inconsistent with Plan Economy of the County Policy 7. This policy provides: "Cooperate with development oriented entities in promoting advantageous aspects of the area." The Board first finds that this policy is not a mandatory approval standard because it uses the word "cooperate" which means that it is a guideline. The Board also finds that the topic of the policy is inapplicable to the proposed legislative text amendment. Moreover, even if the policy were applicable, the Board finds that the proposed legislative text amendment implements this policy because it is more likely to encourage wind development because it provides an adjustment option for those instances where wind turbines cannot meet the two-mile setback.

9. Conclusion.

For the reasons contained in these findings, the Board finds that the applicable approval criteria for this legislative text amendment have been satisfied. The Board approves the text amendment language on pages 5 and 6 of these findings but with the inclusion of option four. The adopted language is as follows:

A. Amendment to Definition of Rural Residence.

> **"For purposes of this section, 'rural residence' is defined as a legal, existing single-family dwelling meeting the standards of USDC 152.058(F)(1)(4) and a rural residence not yet in existence for which a zoning permit has been issued, on a unit of land not a part of the wind power**

generation facility, on or before the date a wind power application is submitted. The measurement of the setback is from the center line of the turbine tower to the center point of the rural residence."

B. Adjustment Criteria.

"(4) The Wind Power Generation Facility applicant may apply for and receive an adjustment for the reduced distance between a turbine tower and a rural residence under the following approval criteria. The adjustment application shall be submitted on a form provided by the County and signed by the rural residence's landowner.

A. The adjustment will not significantly detract from the livability of the subject rural residence. This standard is satisfied if applicable DEQ noise standards are satisfied, there is no significant adverse impact to property access and traffic conditions, and other evidence demonstrates that the residence remains suitable for peaceful enjoyment or, such impacts to the livability of the rural residence resulting from the adjustment are mitigated to the extent practicable; and

B. All other requirements of the Wind Power Generation Facility application remain satisfied.

(5) An adjustment application under this section shall be processed as a Land Use Decision concurrently with the Wind Power Generation Facility application. For applications subject to Energy Facility Siting Council (EFSC) jurisdiction, an adjustment application shall be included as the applicable substantive criteria evaluated by EFSC when granting or denying an application for a Site Certificate."

APPROVED this 17 day of September, 2012.

By: W. Lawrence Givens

W. Lawrence Givens, Chair
Umatilla County Board of Commissioners

BOARD OF COMMISSIONERS UMATILLA COUNTY STATE OF OREGON