

Proposal for consideration by Board of Commissioners for the remand of the LUBA appeal for Ordinances Nos. 2011-05, 2011-06 and 2011-07.

There were 3 items remanded by the Land Use Board of Appeals to Umatilla County regarding the ordinances: (1) Waiver of setbacks; (2) Goal 5 analysis of Walla Walla Watershed Area; (3) Documentation of consistency of standards with 4 Comprehensive Plan policies regarding alternative energy sources. The following is the proposed language to be adopted by Umatilla County to address the 3 matters on remand.

I. Proposed Amendments to Ordinance No. 2011-06 to allow for adjustments for setback from a turbine tower to a rural residence

The 2 mile setback was upheld and is not at issue as part of the remand. The issue remanded was the waiver of the setback requirement. The language proposed below is an amendment to the UCDC to allow approval criteria for an adjustment to provide for a reduced setback. The proposed language does not delegate to neighboring cities or landowners any decision making authority over a requested adjustment. An adjustment would be granted as part of the wind facility application.

§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:

Setbacks. The minimum setback from a turbine tower shall be a distance of not less than the following:

(1) From a turbine tower to a rural residence, two (2) miles [NEW LANGUAGE IN BOLD] **unless the rural residence landowner applies for and receives an adjustment allowing a lesser setback as provided below.** For purposes of this section, 'rural residence' is defined as a legal, conforming dwelling existing on a unit of land at the time an application for a wind facility is deemed complete. The setback measurement is from the centerline of the turbine tower to the center point of the rural residence.'

(2) **The approval criteria for an adjustment to provide for a reduced distance between a turbine tower and a rural residence are shown below.**

A. The proposal will not significantly detract from the livability of the rural residence; and

B. Any impacts to the livability of the rural residence resulting from the adjustment are mitigated to the extent practical; and

C. If an adjustment affects a Goal 5 resource, the wind facility application must consider the effect of the adjustment on the Goal 5 resource; and

D. All other requirements of the wind facility application remain satisfied.

(3) An adjustment under this section shall be processed as part of the wind facility application.

II. Walla Walla Watershed standards adopted under Ordinance 2011-07.

On remand, the County finds that it is not required to adjust the ESEE analysis adopted in its original Goal 5 program. As LUBA noted in its decision, because the County allows wind facilities as a conditional use in resource zones, the County's existing Goal 5 program limits, but does not prohibit, conflicting uses such as wind facilities. The County is not required to readopt Section 11 in its entirety on remand.

The County now finds that it does not wish to amend its Goal 5 program and will adopt Section 11 on remand by striking subsections (B) and (D) in their entirety. By doing so, the County has not adjusted the Goal 5 program and the administrative rule at issue in this assignment of error is no longer relevant to this issue. The County finds that with the adoption of amended section (11) consistent with the existing and acknowledged Goal 5 program, it has appropriately addressed this sub-assignment of error on remand.

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

(HHH) Commercial Wind Power Generation Facility.

(11) Walla Walla Watershed.

Lands located within the Walla Walla Sub-basin East of Highway 11 shall be subject to additional standards. The purpose of these criteria is to prevent impacts to highly erodible soils (as defined by the Oregon Department of Agriculture) and federally listed threatened and endangered species. The standards are also designed to protect sensitive streams and to be consistent with the Clean Water Act.

(A) There shall be no construction of project components, including wind turbines, transmission lines and access roads on soils identified as highly erodible. The highly erodible soils are those soils identified by the Oregon Department of Agriculture as highly erodible.

(B) The application shall demonstrate that the Wind Power Generation Facility and its components will be setback a minimum of two miles from streams and tributaries that contain Federally listed threatened and endangered species, and, that the project will generate no runoff or siltation into the streams.

III. Compliance with Comprehensive Plan Policies.

The UCDC Wind Siting Standards Are Consistent With the Umatilla County Comprehensive Plan

Comprehensive Plan Chapter 8. OPEN SPACE, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES, GOAL 5

Finding 42. Alternative energy resources should be explored more fully in Umatilla County.

Policy 42.

- (a) Encourage development of alternative sources of energy.
- (b) The County will develop a file of alternative energy literature which will be available to the public
- (c) The County will refer people to agencies or private sources of energy conservation or development information when such information is not locally available.
- (d) With the availability and/or addition of adequate information on wind, solar and other alternate energy resources, the County shall complete the Goal 5 analysis process for those resources (OAR 660-16-000).

RESPONSE: The County finds that these Comprehensive Plan Policies are satisfied for several reasons. The County allows for the siting of commercial wind energy facilities and other renewable energy facilities. The conditional use standards apply to all zones in which commercial energy projects are allowed. The standards contained in 152.616(HHH) are clear and objective and therefore make the process more attainable for a landowner and developer. In addition to the siting standards the County has made information such as mapping and other literature available. Additionally, the county provides notice to affected agencies as part of the conditional use process, thereby further enhancing the review process. The County allows, but does not require, that a wind energy facility be included on the Goal 5 inventory, thus allowing development without a time-consuming and subjective legislative amendment, thus expediting the review process.

The County finds that the proposed Ordinances comply with these Comprehensive Plan Findings and Policies.

Comprehensive Plan Chapter 8. OPEN SPACE, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES, GOAL 5

Finding 37. Areas specifically set aside for natural resource exploitation, future development of reservoirs, energy generation and transmission facilities and industry will lower the cost of eventual use, as compared to allowing incompatible development on the same lands before such eventual use.

Policy 37. The County shall ensure compatible interim uses provided through Development Ordinance standards, and where applicable consider agriculturally designated land as open space for appropriate and eventual resource or energy facilities use.

RESPONSE: The County finds that this Policy is met where commercial wind energy facilities are permitted on all resource land in the county and where resource designation such as Exclusive Farm Use and Grazing Farm have the effect of preserving areas for future development of energy facilities.

The County finds that the Ordinance comply with this Comprehensive Plan Policy.

Chapter 16. ENERGY CONSERVATION

Finding 1: Escalating cost of depleting non-renewable energy sources make renewable energy source alternatives (e.g. solar wind) increasingly more economical, and help conserve existing energy supplies.

Policy 1: Encourage rehabilitation/weatherization of older structures and the utilization of locally feasibly renewable energy resources through use of tax and permit incentives.

RESPONSE: The County finds that the proposed wind siting standards in UCDO 152.616(HHH) are consistent with this Policy where the clear and objective standards provide incentive and assurance for a developer seeking permits. The clear and objective standards provide regulatory assurance to a landowner, developer and for financing purposes. Clear and objective standards provide more assurance to a developer seeking to complete the permitting and development process than do vaguely written standards which are more susceptible to appeal.

The County finds that the proposed standards comply with this Plan Policy.

Chapter 12. ECONOMY OF THE COUNTY

Finding 1: Predominately a resource based economy, the County experiences fluctuations in market demand, production supply, and seasonal unemployment and underemployment (sic).

Policy 1: Encourage diversification within existing and potential resource-based industries.

RESPONSE: The County finds that by allowing commercial wind energy development as a conditional use in resource zones and by adopting clear and objective standards, that the proposed wind siting standards in UCDO 152.616(HHH) encourage the development of commercial wind energy in resource zones and thus enhance opportunities to diversify resource-based industries.

The County finds that the proposed standards comply with this Plan Policy.