

**IBERDROLA RENEWABLES, LLC
V.
UMATILLA COUNTY**

LUBA NO. 2012-082

**JIM HATLEY
V.
UMATILLA COUNTY**

LUBA NO. 2012-083

Local File Number
Text Amendment, #T-12-046

CONSOLIDATED RECORD

Iberdrola Renewables, LLC vs. Umatilla County, LUBA No. 2012-082

Jim Hatley vs. Umatilla County, LUBA No. 2012-083

Local File Number #T-12-046

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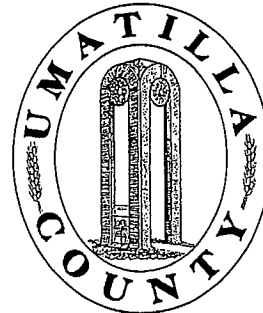
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Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

AFFIDAVIT OF MAILING

OCTOBER 10, 2012

Notice of Adoption of Land Use Regulation Amendment; Local File
number: T-12-046 and Umatilla County Board Ordinance No. 2012-13 to
persons who participated in the hearing process.

PUBLIC NOTICE

I hereby certify that the accompanying list of property owners, local, state and federal officials, utility company representatives and interested parties, were mailed notice of the adoption of the land use application noted above, via first class mail on September 20, 2012.

Dated this 10 day of October, 2012.

Gina Miller

Designated Mailing Officer

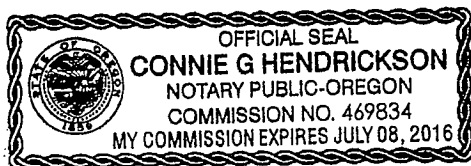
STATE OF OREGON)
COUNTY OF UMATILLA)

Signed and personally appeared before me this 10 day of

October, 2012, by Gina Miller

Connie G Hendrickson

Notary Public for Oregon





FORM

2

DLCD

Notice of Adoption

☐ In person ☐ electronic ☐ mailed

COPY

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

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 Development 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
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

25-days prior to first evidentiary hearing?

☒ Yes ☐ No

no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

00002

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.

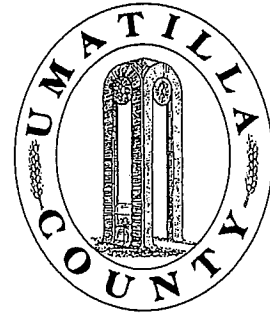
<http://www.oregon.gov/LCD/forms.shtml>

Updated December 30, 2011

000003

Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA
MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
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SMOKE
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RURAL
ADDRESSING

LIAISON,
RURAL
RESOURCES &
ENVIRONMENT

September 20, 2012

TO: Interested Parties

FROM: Tamra Mabbott

RE: Notice of Adoption - Text Amendment #T-12-046

The Umatilla County Board of County Commissioners adopted Ordinance No. 2012-13 approving the text amendment to allow for a two mile adjustment between wind turbines and rural residences. The Findings of Fact were signed by the Board on September 17, 2012.

The Ordinance and Findings are posted on the county website at <http://www.umatillacounty.net/planning>. Please contact the Planning Office if you are not able to download the documents.

The requisite Notice of Adoption was sent to the Department of Land Conservation & Development on September 20, 2012. Therefore, September 20th begins the 21-day Land Use Board of Appeals (LUBA) appeal period. The appeal period will end at 5:00 p.m. on October 11, 2012.

Appeal of the county decision must be made to LUBA. Persons who may appeal are identified in Section 152.766(F) of the County Development Code. If you wish to contact LUBA to determine whether an appeal has been filed, their address is: 550 Capitol Street NE, Suite 235, Salem, OR 97310; phone (503) 373-1265.

Cordially,

A handwritten signature in cursive script, appearing to read "Tamra Mabbott".

Tamra J. Mabbott,

Planning Director

c: persons who participated in the local process

./S...ED/(HHHupdate)/setbackadjustment/final approval letter to inter parties

T-12-046 Amendment to CUP section (Setback Adjustment standards) hearing - Public Notice list

USPS on 20-12-12
Notice of Adoption letter
for # T-12-046

Name	PC hear 07/19/12	BCC hear 08/16/12	Participate by email testimony	Participate by oral/written testimony at hearing (s)	Participation by submitting letter	Attended hearing, no participation
Norm Kralman	X					X 07/19
Richard Jolly	X			X 07/19		
Sara Parsons, Iberdrola	X	X		X 07/19 X 08/16		
Nicole Hughes	X	X		X 07/19 X 08/16		
Elaine Albrich	X	X		X 07/19 X 08/16		
Cindy Severe	X	X		X 08/16		
Robin Severe	X					X 07/19
Steve Corey	X	X		X 07/19 X 08/16		
Douglas Corey	X	X				X 07/19 X 08/16
Ryan Stoner	X					X
Dana Perkins	X				X 08/16	
Bobby Corey	X					X 07/19
Mike Robinson	X	X		X 07/19 X 08/16		
Dave Price		X		X 08/16		
Chris Bodewig no contact info		X				X 08/16
Gregg Shannon		X		X 08/16		
Judy Price		X				X 08/16
Debbie Kelley		X		X 08/16		
Ann Jolly		X				X 08/16
Catherine Anderson		X				X 08/16
Robert Lazinka		X				X 08/16
James Burns		X				X 08/16
Bruce White (atty Jim Hatley)					X 08/16	
Jim Hatley					X - via Bruce White	
Rebecca Heise no contact info			X 08/16			

Charles Gillis
Tim & Sandra Guild
Bud Randall

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 *decisionmaking 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.

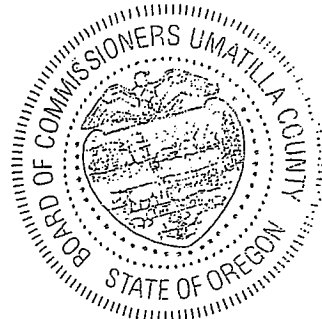
(5) An adjustment application under this section shall be processed as a Land Use Decision concurrently with the Wind Power Generation Facility application. For applications subject to Energy Facility Siting Council (EFSC) jurisdiction, an adjustment application shall be included as the applicable substantive 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, Chair

Umatilla County Board of Commissioners



THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

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

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.

- (46) 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.

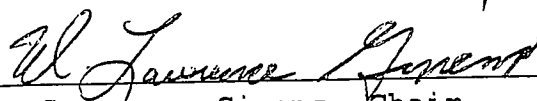
(72) The turbine/towers shall be of a size and design to help reduce noise or other detrimental effects. At a minimum, the Wind Power Generation Facility shall be designed and operated within the limits of noise standard(s) established by the State of Oregon. A credible noise study may be required to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

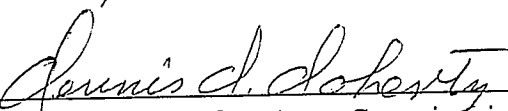
FURTHER the Board of Commissioners finds and orders that the adoption of this ordinance is supported by the Findings and Conclusions signed and approved under separate document.

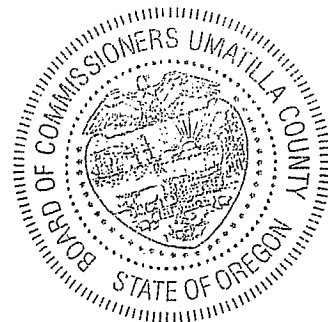
FURTHER by unanimous vote of those present, the Board of Commissioners deems this Ordinance necessary for the immediate preservation of public peace, health, and safety; therefore, it is adjudged and decreed that an emergency does exist in the case of this Ordinance and it shall be in full force and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

DATED this 16th day of August, 2012.

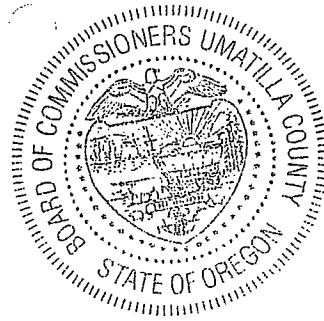
UMATILLA COUNTY BOARD OF COMMISSIONERS


W. Lawrence Givens, Chair


Dennis D. Doherty, Commissioner

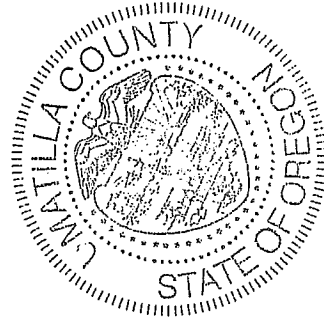


William S. Hansell
William S. Hansell, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS

Sean Humphreys
Records Officer



UMATILLA COUNTY BOARD OF COMMISSIONERS

Meeting of Thursday, August 16, 2012 1:30 p.m.

Umatilla County Justice Center, Media Room

Pendleton, Oregon

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

COUNTY COUNSEL: Doug Olsen

STAFF: Tamra Mabbott, Gina Miller
Mike Robinson, attorney

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

CALL TO ORDER:

Chairman Givens called the hearing to order at 1:30 p.m. and read the opening statement.

NEW HEARING:

Update of Umatilla County Development Code, #T-12-046. Amendment to Conditional Use Section 152.616 (HHH) of the Umatilla County Development Code and establishing standards for an adjustment to the two (2) mile setback between wind turbine tower and rural residences. Applicant is Umatilla County. Applicable Criteria are found in UCDC Section 152.750-152.755 Amendments.

MINUTES:

Chairman Givens stated that the minutes from the June 7, 2012 hearing were ready to be adopted. Commissioner Hansell moved to adopt the minutes as presented and Commissioner Doherty seconded the motion. Motion carried 3:0.

Chairman Givens called for abstentions, conflicts of interest, or declaration of ex-parte communications. Commissioner Doherty commented that he had communications with people on this matter; and Chairman Givens and Commissioner Hansell both stated that people have visited with them on this topic. The commissioners stated that they felt that they could make a fair decision in this matter. There were no objections to jurisdiction.

Staff Report: Mrs. Mabbott presented the staff report. She reviewed the packet sent to the Commissioners and the additional materials submitted since the last hearing. She advised that Mike Robinson would be acting as additional counsel to Umatilla County on this matter. Mrs. Mabbott explained that the Board also had findings and draft minutes from the Planning Commission to consider for this hearing. There was also information in their packets from the May 4, 2012 Work Session, where parties representing the

Planning Commission, wind developers, and property owners participated in a discussion. Mrs. Mabbott referred to a letter dated July 16, 2012 from Nicole Hughes, Element Power, which included suggestions for the language. The letter also suggested using the current language in the Development Code to identify replacement dwellings as part of this proposed setback adjustment language. Mrs. Mabbott stated that the Board had four new items to be included into the record; letters from Dana Perkins, Elaine Albrich, Bruce White representing Jim Hatley, and Rebecca Heise.

Commissioner Hansell moved to enter these four items into the record as Exhibit #1-4, and Commissioner Doherty seconded the motion. Motion carried 3:0.

Mr. Olsen suggested adding the 10 additional items in their packets as Exhibits #1-10, and making these four new items Exhibits #11-14.

Commissioner Hansell resubmitted his motion to amend the Exhibit #'s to 1-10 in the packets and the four new items as Exhibits #11-14, and Commissioner Doherty seconded the motion. Motion carried 3:0.

Commissioner Doherty asked Mrs. Mabbott to clarify the replacement dwelling definition in context, and asked if this would apply to any standing structure. Mrs. Mabbott read aloud the standards found in the Development Code; a structure must have intact exterior walls and roof, functional indoor plumbing in the form of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system, interior electrical wiring and a heating system. Discussion followed on what constitutes a replacement dwelling. Mrs. Mabbott explained that occupancy is not a standard.

Commissioner Hansell asked for clarification on what options they had to consider at this hearing. Mr. Olsen explained the four options that he, Mr. Robinson and Mrs. Mabbott had drafted based on the results from the May 4th work session and the Planning Commission hearing on July 19th. The first option was to adopt the language drafted at the May 4th work session, the second option was to adopt the language recommended by the Planning Commission striking the "good faith" language, the third option was to include the rural residences for which an application had been submitted based on the date when a wind power application had been submitted, and the fourth option was to include existing rural residences that met the replacement dwelling standards and for rural residences not yet in existence for which a Zoning Permit had been issued before the wind power application submittal date. Commissioner Hansell asked to confirm that Mr. Robinson was suggesting Option #4 as the best recommendation for adoption.

Mr. Robinson stated that the only real difference between what was drafted at the May 4th work session and the Planning Commission hearing was the additional language defining a rural residence with the existing standards for a replacement dwelling. He stated that if the Board wanted to adopt Option #4, they just needed to decide what language they would adopt for the rural residence. Mr. Robinson stated that Option #4 seemed to capture the elements that most people were looking for in the proposed language. Commissioner Hansell said it would be helpful to hear from people testifying which

option they supported. Mr. Olsen stated that Option #4 had been posted on the website for nearly a week for review.

Mrs. Mabbott clarified that the language being recommended today was a result of the May 4th work session, with some changes to the definition of a rural residence. She summarized by saying that the Board had ordered the Planning Commission to develop standards and a process to grant an adjustment to the 2-mile setback distance from a wind turbine and a rural residence. Most of the letters received as additional materials and entered into the record were in support of Option #4.

Commissioner Doherty asked to address a letter that was submitted during the hearing from a courier representing Bruce White. He asked for the attachments to the letter to be entered into the record as Exhibit #13. Mr. Olsen clarified what the attachments were. Commissioner Hansell moved to amend Exhibit #13 to include the new attachments just submitted. Mr. Robinson asked how many attachments were included with the letter from Mr. White. Chairman Givens stated that there was a list of the attachments. Mrs. Mabbott clarified that the person who delivered the packet stated that the page listed as Exhibit #6 was not in the packet she had just submitted. Mr. Robinson stated that they needed to be clear on the record, in the event of an appeal to LUBA (Land Use Board of Appeals). Commissioner Hansell stated that his motion was to accept the attachments just delivered into the record as an amendment to Exhibit #13, as #1-5 and #7 as there was no #6 in the packet. Commissioner Doherty seconded the motion. Motion carried 3:0.

Public Testimony: Dave Price, 80488 Zerba Rd, Athena, Oregon. He was not at the Planning Commission hearing in July, but had listened to the audio record. He was bothered that even though Chairman Randall stated that testimony would be limited to the subject of the setback adjustments, many people still entered testimony about the 2-mile setback. He stated that this was inappropriate and should not be allowed into the record. He requested that the record be examined and have all testimony pertaining to the 2-mile setback removed. Mr. Price stated that he supports the setback adjustment process as proposed. He discussed several issues that concern him about the proposed process; the difference between a proposed project at the application stage versus the actual project as it is built, how the terrain limits development in many areas, and how in the future there will be less people in the project areas. Mr. Price also talked about the Department of Environmental Quality (DEQ) state noise standards and how they are ineffective as a standard. He felt that these issues needed to be addressed sooner rather than later. Mr. Price said that his next issue of concern was the definition of the rural residence. He stated that the problem would come with property owners who have the right to establish a dwelling but haven't built anything yet. He described two examples of how he had already seen this happen. He suggested a possible solution to this problem. Instead of using the "deemed complete" date, the wind developer could be asked to publish a public notice to notify land owners that the wind developer has intentions of submitting an application for a wind energy facility in the area. This would give land owners who had future intentions of developing a rural residence an opportunity to file their own application in time. To summarize, Mr. Price requested that

the record be examined, that the Board look for a way to deal with rural residences that could be built in the future and how to protect them, and he asked the Board to consider the notification suggestion he proposed.

Commissioner Hansell moved to accept Mr. Price's letter into the record as Exhibit #15, and Commissioner Doherty seconded the motion. Motion carried 3:0.

Commissioner Doherty asked for staff input on Mr. Price's suggestion of a public notice requirement during the pre-application stage. Mrs. Mabbott responded that this sounded like a good idea, but it was a new idea and would need to be first considered at the Planning Commission level to amend a different section of the code.

Chairman Givens asked staff to explain the timeline for acquiring a permit to build a rural residence. Mrs. Mabbott stated that if someone comes to the counter to apply for a replacement dwelling and the existing structure does not meet the replacement dwelling criteria, they do not get a permit. The only exception to this is if the existing dwelling is destroyed, the property owner has one year to apply for the replacement dwelling permit to retain the right to build.

Mrs. Mabbott responded to Mr. Price's concern about the record from the Planning Commission hearing. She stated that the Planning Commission tries to allow everyone the opportunity to speak, but only the applicable information is used in the findings. Chairman Givens asked about amending testimony that was already a part of the record. Mr. Robinson stated that anyone can speak during a public hearing, but it is up to the deciding body to weigh what is said when making a decision. It is not possible to strike testimony after the hearing is closed. That was a quasi-judicial hearing and people can say anything they want to. He also stated that the chair could limit testimony to the subject at hand.

Mr. Olsen responded to Mr. Price's concern and stated that if a wind turbine was built within the 2-mile setback, the developer would be in breach of the ordinance. They would have to either provide an adjustment or move the turbine. Commissioner Doherty asked about discussing the suggestion of a "pre-application" notice requirement, and Mr. Olsen explained that this was beyond the scope of the hearing today, but the Board could direct the Planning Commission to consider this suggestion at a later hearing.

Chairman Givens asked Mr. Price to clarify what he meant by the placement of future turbines in relationship to future rural residences. Mr. Price stated that he was referring to rural residences that were not in the project area during the application process, but because of the considerable difference between proposed and "as-built" wind projects, could possibly change.

Public Testimony: Debbie Kelley, 146 SW 11th Street, Milton-Freewater. Ms. Kelley stated that she was representing the Blue Mountain Alliance. She read her written statement aloud, and asked that it be entered into the record.

Commissioner Hansell moved to accept their written testimony into the record as Exhibit #16, and Commissioner Doherty seconded the motion. Motion carried 3:0. Commissioner Hansell asked Ms. Kelley what she thought of the other options. Ms. Kelley replied that they were not aware of the other options at their meeting and could not offer an opinion.

Public Testimony: Cindy Severe, 82422 Vansycle Rd, Helix, Oregon. Mrs. Severe read her written statement aloud, and asked that it be entered into the record.

Commissioner Hansell moved to enter Mrs. Severe's letter into the record as Exhibit #17, and Commissioner Doherty seconded the motion. Motion carried 3:0.

Commissioner Doherty commented that the Board should only be allowing testimony pertaining to the four options for the proposed adjustment options. Discussion followed on what should be and what should not be discussed during this hearing. Chairman Givens stated that testimony should be limited to the adjustment options language for the remainder of this hearing.

Mrs. Mabbott said that a courier from Mr. Bruce White had just delivered additional copies of the attachments submitted earlier. Mr. Olsen explained that these new documents would be considered Exhibit # 8 and Exhibit #9 for the record. Commissioner Hansell moved to amend the previous motion to accept Exhibit #8 and #9 into the record, and Commissioner Doherty seconded the motion. Motion carried 3:0.

Public Testimony: Greg Shannon, PO Box 400, Helix, Oregon. Mr. Shannon stated that he supported the 2-mile setback. Commissioner Givens advised that the Board was not taking testimony on the 2-mile setback, only the four options for an adjustment to the setback standard.

Mr. Olsen explained the procedure of what people should be providing testimony for at this hearing. This hearing was only for considering proposed language to establish an adjustment standard to the 2-mile setback, as remanded by the Board of Commissioners to the Planning Commission. The 2-mile setback standard was appealed to the Land Use Board of Appeals (LUBA), and LUBA required some additional findings from the Board. The additional findings were not appealed, so the 2-mile setback standard and findings were adopted and are currently in place. Mr. Shannon stated that he does not support any adjustments.

Public Testimony: Nicole Hughes, Element Power, Portland, Oregon. Ms. Hughes stated that she had submitted a letter on Stoel-Rives letterhead. Chairman Givens advised that her letter was Exhibit #15 in the record. She acknowledged the effort put into this process by the Board and citizens of the county. Ms. Hughes stated they support adopting the adjustment language with Option #4.

Public Testimony: Sara Parsons, 1125 NW Couch Street, Portland, Oregon. Ms. Parsons stated that she represented Iberdrola Renewables. Ms. Parsons stated that they have been involved in this process for a long time, and they support the adjustment provision. She stated that Option #4 resolves most of the concerns and issues identified at the May 4th work session. She explained micro-siting and corridors for a wind farm project. Ms. Parsons said that while they support Option #4 for the adjustment provision, they would still like to caution the county that by leaving the decision to landowners, this could be subject to challenge by LUBA. This could be construed as improper delegation of authority, as noted in their findings from the last appeal. A single land owner could stop a project from being built by not signing the adjustment application. This would preclude development in the county and this would not be consistent with the county Comprehensive Plan or the statewide planning goals.

Commissioner Hansell asked how a single land owner could preclude development. Ms. Parsons replied that the adjustment provision requires an application, signed by the landowner, to be submitted. This results in delegating authority to the land owners. Mr. Robinson stated that he disagreed with her statement. He said that state law requires that the property that is the subject of the permit application must have the signatures and consent of the property owners. Mr. Robinson stated that the issue LUBA had was with who makes the decision, not that an application has to be signed by the property owner. LUBA stated in their findings that the Board could not delegate its decision making authority to a property owner. Mr. Robinson cited a Supreme Court case that supported his interpretation. He said that it was very clear that the decision making authority remained with the county through this adjustment process. There was no third party involved in the decision process.

Commissioner Doherty commented on the procedural context of the adjustment application process and land owner consent. Mr. Robinson explained he would not characterize it as land owner consent, and that the code required that the adjustment application be submitted with the land owner's signature. Commissioner Doherty stated that the key to this was that the application for the adjustment could potentially be denied by the county. Mr. Robinson agreed and said that the decision stayed with the county and this satisfied the LUBA remand findings. Chairman Givens summarized the process by stating that the adjustment application, when signed by the land owner, was simply acknowledging that the project is within the 2-mile setback of their rural residence and they agree to that. The county would make the decision as to whether or not the adjustment was approved or not.

Public Testimony: Steve Corey, representing Cunningham Sheep Company. He stated that he was the secretary of the Cunningham Sheep Company, a tax paying land owner in Umatilla County. He stated that they may have wind projects on their land in the future. He asked if his letter from the May 4th work session was a part of the record. Mr. Olsen confirmed that his letter was in the record as Exhibit #9. Mr. Corey also said that his map from Iberdrola was not in the packet. Chairman Givens confirmed that the map was in the record as part of Exhibit #9. Mr. Corey stated that they support Option #4 as the best solution, giving them certainty for their wind projects. He also stated that they do

not agree with any of the options and do not believe that a rural residence should be able to deter wind development. He discussed why Options #1-3 would change the location of where a turbine could be placed. Option #4 was the closest to satisfying their needs, but they would like to see another option suggested. Mr. Corey commented that they did not believe that a consensus was reached at the May 4th work session, and was uncomfortable with this being discussed at the end of the work session.

Commissioner Doherty asked Mr. Corey if Option #4 did not include all the things that they wanted to see, and Mr. Corey agreed with this assessment. They wanted a way to identify certainty of placement for the developer's projects. Chairman Givens asked Mr. Corey if he thought that someone would take out a permit to build a home with no intention to build that home, just to stop the wind project development. Mr. Corey confirmed that he thought this could happen. He also commented on what constituted a valid replacement dwelling. Mrs. Mabbott clarified that a land use decision on resource land was valid for six (6) years. She commented that the language pertaining to what constituted a replacement dwelling was not included in the motion approved by the Planning Commission. A land use decision (LUD) or Conditional Use Permit (CUP) was approved first, and then a Zoning Permit (ZP) was required to submit a site plan for the proposed development.

Mr. Robinson discussed the "good faith" language that was drafted at the May 4th work session, and why it was developed. He compared the decision for a LUD as opposed to the site plan requirement for the Zoning Permit. He heard concerns from the developers about needing siting certainty and that was why he suggested using the Zoning Permit option. This option helps both developers and property owners with certainty.

Mrs. Severe asked for explanation on what the Board will be basing their decision on. Commissioner Doherty stated that the 2-mile setback has withstood appeal and was in place. The only thing that will be considered today are the four options pertaining to the adjustment to the 2-mile setback provision. They are dealing with setting up a process to establish standards for the setback adjustment.

Public Testimony: Elaine Albrich, representing Stoel-Rives. 900 SW 5th Suite 2600, Portland, Oregon. Ms. Albrich said that she had not intended to testify at this hearing, but decided to after hearing some of the comments made earlier. She discussed what components should be going into the decision making process for the Board, referencing Page 4 of the findings packet. She expressed concern about the potential of having the rural residence land owner signature as a requirement to file an adjustment application, as this could still be construed as unlawful delegation of authority by the county. Ms. Albrich encouraged the Board to adopt Option #4 to resolve the on-going discussion and move forward. This would provide a bright line test for staff, land owners and developers when submitting and processing wind energy facility applications. Option #4 eliminates some of the concerns that have been present during this process, but there are still ongoing challenges yet to be resolved.

Commissioner Doherty asked Ms. Albrich if the Board selected Option #4, how she would justify her comment that the Board was still embodying an unlawful delegation of power by requiring the land owner to consent to the application. Ms. Albrich replied that the Board should consult County Counsel on this question. She explained that Options #1-4 do not address the unlawful delegation question, they go towards the "snapshot" in time for processing an application and when the setback standards would be applied.

Mr. Robinson asked Ms. Albrich to clarify her comments. He asked Ms. Albrich if the developers were concerned that this was more of a practical issue than a legal issue and would this requirement potentially make it more difficult for developers to submit applications if they had to get property owners to sign the adjustment form. Ms. Albrich responded that she believed it was both a practical and legal issue. Mr. Robinson asked Ms. Albrich if he had correctly stated their practical concern, and she replied that he had. It was a realistic concern for developers that it would not be feasible for them to obtain adjustments.

Commissioner Doherty asked Mr. Robinson to clarify his point on the delegation of authority. Mr. Robinson explained that this was not a delegation issue. The delegation issue occurs in who decides whether the adjustment was granted or not. LUBA agreed with the petitioner at the last appeal because it was the property owner making the decision, not the county. Mr. Robinson stated that this was now more of a practical issue for the developers. If the developer wanted to place a turbine nearer to a rural residence than the 2-mile setback, they could apply for an adjustment which will be decided by the county. The application must be signed by the property owner. The practical issue comes from the developer potentially not being able to obtain a land owner signature. Mr. Robinson wanted to distinguish the practical effect versus the legal effect. Commissioner Hansell stated that the flexibility was meant for the land owners, and the flexibility was built in by letting the land owner decide if they would sign the adjustment or not. Mr. Robinson said that was a good point. The adjustment to the 2-mile setback process was not an improper delegation of authority, according to LUBA. The improper delegation would occur only if the county gave the decision authority to the property owner or another third party. Mr. Robinson stated that this was not a legal issue, but a practical issue because the wind developer might not be able to make the adjustment application.

Ms. Albrich asked to clarify her position for the record. She wanted to ensure that she was not misinterpreted or intentionally waiving an argument pertaining to the practical effect versus the legal effect. She does believe that there could potentially be a legal effect in the sense of requiring the land owner signatures up front that could be seen as a denial at the onset of the process. She wanted to preserve for the record that they are not waiving any arguments that they could make in the future.

Chairman Givens commented that they will not be able to please all parties, so what if they decided to not have an adjustment process at all and stay with the 2-mile setback. Mrs. Mabbott stated that they could accept an application for a variance, but that would create even more uncertainty for all parties involved. The variance process has a very

high bar and vague language, and was typically used for minor setbacks to a property line for a proposed structure.

Mr. Robinson explained that he recommended the adjustment process over the variance process because there was an abundance of case law following variances, and they are difficult to deliberate. Adjustment language was easier to work with because the county could draft their own language.

Mrs. Mabbott commented on some previous testimony. It had been said that if an adjustment application was not signed by the land owner, it could potentially kill an entire project. She stated that the adjustment was typically between a single turbine and a single residence. Turbines are built in strings and the likelihood of a single turbine killing an entire project was very small. If the single turbine could not be moved, it could simply not be built.

Public Agency: no testimony was offered.

Chairman Givens closed the hearing and moved to deliberation. Discussion on closure of the record.

Commissioner Doherty said that he has not changed his feelings since last June. He wants to find balance where the industry has certainty to develop projects and that there is flexibility in the process to ensure protection for land owners. He supports Option #4 as the product of collaboration between all parties. Commissioner Doherty stated that he also wanted to have the Planning Commission consider the suggestion from Mr. Price regarding a notification requirement to be added to the pre-application process.

Commissioner Hansell said that he agreed with Commissioner Doherty that the adjustment process needed certainty and flexibility. Staff also needs to be able to implement the process. He supports Option #4 as being the best choice for staff and land owners.

Chairman Givens discussed earlier comments made about the Commissioner's role to protect the citizens of the county. He said this was not an easy issue to deal with, and not everyone will be satisfied with the decision they make today. They will listen to and consider all sides of the issue. Chairman Givens stated that he supports Option #4.

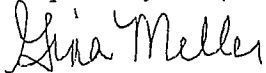
Commissioner Doherty moved to accept the decision of the Planning Commission with the Option #4 provision, and direct staff to modify the findings accordingly. Commissioner Hansell seconded the motion. Motion carried 3:0.

Chairman Givens asked about the suggestion from Mr. Price. Mr. Olsen advised that the Board could direct staff to bring this before the Planning Commission. Commissioner Hansell said that he would like to see the staff review before it was sent on to the Planning Commission, and Commissioner Doherty agreed with this suggestion.

Commissioner Hansell moved to direct staff to further review the public notice requirement during the pre-application conference suggested by Mr. Price, and report back to the Board for discussion. Commissioner Doherty seconded the motion. Motion carried 3:0.

Chairman Givens adjourned the hearing at 3:42 p.m.

Respectfully submitted,

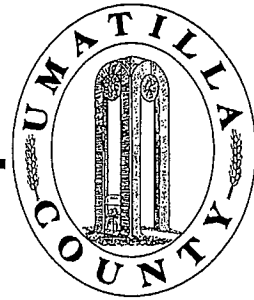


Gina Miller, Secretary

Umatilla County

Department of Land Use Planning

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252



Replacement Dwellings In Resource Zones

The replacement of a lawfully established dwelling is possible through a Zoning Permit. Replacement dwellings are allowed in the EFU Zone (152.058 (F)) and the GF Zone (152.083 (O)). The residential zones (i.e. RR-2, RR-4, UC, etc.) provide for the placement of homes as a "permitted use with a zoning permit."

A zoning permit for a replacement dwelling in the EFU or GF Zones may be permitted if the existing dwelling complies with the following criteria:

§ 152.058 (F) Alteration, restoration or replacement of a lawfully established dwelling that:

- (1) Has intact exterior walls and roof structures;
- (2) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (3) Has interior wiring for interior lights;
- (4) Has a heating system; and
- (5) In the case of replacement, the dwelling to be replaced is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;
- (6) A replacement dwelling may be located on any part of the same lot or parcel so long as it complies, where practicable, with all applicable siting standards.
- (7) If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, then the applicant shall, as a condition of approval, execute and record in the deed records for the

county where the property is located a deed restriction prohibiting the siting of a dwelling on the EFU portion of the lot or parcel. A release from the deed restriction may occur if the statute regarding replacement dwellings changes or if there is a change in the Plan and Zone designation. The county Planning Department shall maintain a copy of the deed restriction or release statement filed under this section.

(8) If the applicant has requested a deferred replacement permit, the dwelling is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time

(9) A Covenant Not to Sue with regard to normal farming practices shall be recorded as a requirement for approval.

(10) Permits issued for replacement dwellings are valid for four years. A permit extension for an additional two years may be obtained.

FEE & PROCESSING

Field Inspection, Removal Verification - \$75.00. Complete the attached form and a Zoning Permit application and submit to the Planning Office. A public notice is not required.

It is the responsibility of the applicant to submit a complete application with all necessary attachments. Planning staff can refuse an incomplete application

Version: July 2, 2012

File Location: H:\shared\Forms_Master\Replacement_Dwellings.doc

00034

Replacement Dwelling Verification

Provide the details of the existing dwelling. The purpose of this application is to provide a method for replacing a lawfully established dwelling (either stick built or manufactured home) in an EFU or GF Zone.

1. How and when was the existing dwelling legally established? Provide documentation. If the dwelling is extremely old and no land use permits were issued then paperwork from the County Assessor can be submitted to show that the home was placed prior to land use planning regulations (prior to 1972).

2. Describe the condition of the existing dwelling. The features described are still required even if the dwelling has been vacant for several years and possibly unlivable. Provide proof of these features through photos.

- ☐ Has intact exterior walls and roof structures;
- ☐ Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- ☐ Has interior wiring for interior lights;
- ☐ Has a heating system; and

Please Note: If the dwelling had all of these features, but has already been removed from the parcel then the possibility of replacing the dwelling may have been forfeited.

3. **Replacement Deferral.** The dwelling is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void.

- ☐ The new dwelling will be built within one year.
- ☐ I would like to request the Replacement Deferral to build a new dwelling at any time in the future.

Please Note: A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

4. Complete the Covenant Not to Sue Agreement (on the next page) and sign in front of a Notary Public. Also provide an accurate, legible legal description of the property in question.

COVENANT NOT TO SUE

In the consideration of the following development allowed via
Zoning Permit #ZP-_____ - _____, issued by Umatilla County
Planning Department as a **Replacement Dwelling** issued to

_____, property owner(s)
of the property described in "Exhibit A" attached to the document.
The property owner(s), their successors, heirs and assigns do
hereby covenant and agree to forever refrain from instituting or
prosecuting any action against the owners, operators, and
contractors of property zoned for farm use, their successors, heirs,
and assigns, for or on account of any and all losses, injuries,
damages or claims arising out of the conduct of any generally
accepted farming practices on such property, which have interfered
or may interfere with the use and enjoyment of the property
described in Exhibit A. Nothing herein contained shall be construed
as an admission or any legal liability, and it is expressly understood that this is a compromise of all
claims, past, present or future, against the parties to this covenant and all those in interest with them. As
provided by ORS 30.938, in any action or claim for relief alleging nuisance or trespass and arising from
a practice that is alleged by either party to be a farm or forest practice, the prevailing party shall be
entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal.

For Records'
Office Use

It is also agreed that if this covenant is breached and action is instituted against their successors, heirs,
and assigns, that this covenant may be pleaded as a defense.

DATED this the _____ day of _____, 20__

Legal Owner(s) _____
Parcel Map # _____

X

Signature of Legal Owner, Title

X

Signature of Legal Owner, Title

STATE OF _____) ss.
County of _____)

Acknowledged before me this the _____ day of _____, 20__ signed and
personally appeared before me the above named _____
and acknowledged the foregoing to be a voluntary act and deed.

Notary Public State of Oregon

*Return to Second Party, Umatilla County Planning,
216 SE 4th, Pendleton, OR 97801 once recorded.*

Covenant Not to Sue, page 1

00036

EXHIBIT "A"
Legal Description of Property

DRAFT

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 an Adjustment 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

This 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 an adjustment 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 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 text of the UCDC to provide for an adjustment 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 Committee met on May 4, 2012 and recommended certain language.

2. 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 the Planning Commission to recommend language for adoption to the Board than that initiated because nothing in either the UCC or the Board order prohibits the Planning Commission from doing so.

3. 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 main issues were before the Planning Commission. The first was whether a rural residence should be subject to the two-mile standard if only an application for the residence had been submitted, whether the application should be approved, or whether a zoning permit for the residence must have been issued. If only an unapproved application is required, then the issue is whether the application should have been 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. 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 habitability. This UCDC provision implements an Oregon Revised Statute ("ORS") and an Oregon Administrative Rule ("OAR") provision.

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 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 then adjourned the public hearing.

4. Procedural Matters

A. Categorization of this Matter

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-acknowledgment 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 notice published in the *East Oregonian* newspaper on [insert date].

The Board finds that the County has satisfied the post-acknowledgment 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. 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.

5. Description of 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 as explained above. An adjustment is not a variance. An adjustment is a modification of the standards, subject only to the approval criteria considered in this matter. The Board-proposed 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.

6. 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.

7. **Conclusion**

For the reasons contained in these findings, the Board finds that the applicable approval criteria for this text amendment have been satisfied.

(HHH) *Commercial Wind Power Generation Facility.*

- (1) County Permit Procedure
- (2) Pre-application Meeting
- (3) Conditions of Approval
- (4) Permits
- (5) Application Requirements
- (6) Standards/Criteria of Approval
- (7) Dismantling/Decommissioning
- (8) Decommissioning Fund
- (9) Annual Reporting
- (10) Permit Amendments
- (11) Walla Walla Watershed

(1) *County Permit Procedure.*

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

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

(2) *Pre-application Meeting.*

A pre-application meeting(s) is required. The applicant will be expected to bring preliminary information about the application components described in Application Requirement (5) below. County staff will arrange the meeting and will invite local, state, federal and other agency representatives and individuals with

pertinent expertise. The purpose of the pre-application meeting will be to identify potential impacts and opportunities and to advise on the level of detail required in each of the application components described in (5) below, and establish technical oversight requirements for monitoring plans.

(3) *Conditions of Approval.*

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

(4) *Permits.*

Prior to commencement of any construction, all other necessary preconstruction permits shall be obtained, including but not limited to a conditional use permit, zoning permit, and road access permit from Umatilla County and other permits from state agencies with the requisite jurisdiction.

(5) *Application Requirements.*

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

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

(2) A tentative construction schedule;

(3) The legal description of the property on which the Wind Power

Generation Facility will be located,; and

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

(b) A map showing the location of components.

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

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

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

(d) (1) Demonstrate compliance with § 152.061.

(2) Identify potential conflicts, if any, with neighboring rural homes. Explain how conflicts could be mitigated and the steps to mitigate such conflicts, e.g., noise easement.

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

(f) A Re-vegetation and Erosion

Control Plan, developed in consultation with the Umatilla County Public Works Department, Soil and Water Conservation District, and appropriate Watershed Council. At a minimum, the plan shall include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and restoration with an appropriate mix of native vegetation or vegetation suited to the area. The plan shall also address monitoring during and post construction. Reimbursement to agencies for their time on review shall be the responsibility of the developer

(g) A Fish, Wildlife and Avian Impact Monitoring Plan. The monitoring plan shall be designed and administered by the Wind Power Generation Facility owner/operator's wildlife professionals. [See § 152.616 (HHH) (2), above] The plan shall include the formation of a technical oversight committee to review the plan, and consist of the following persons:

(1) The landowners/farm tenants.

(2) Wind Power Generation Facility owner/operator representative. (Chair)

(3) Oregon Department of Fish and Wildlife representative, if the agency chooses to participate.

(4) Two Umatilla County residents with no direct economic interest in the project and recommended by the applicants for appointment by the Umatilla County Board of Commissioners.

(5) U.S. Fish and Wildlife representative, if the agency chooses to participate.

(6) Umatilla County Planning Commission member.

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

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

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

(2) A Spill Prevention, Control and Counter Measure Plan (SPCC) shall be provided. The plan shall include verification that a local emergency service provider has equipment, training and personnel to respond to spills.

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

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

(i) A Weed Control Plan addressing prevention and control of all Umatilla County identified noxious weeds, directly resulting from the Wind Power Generation Facility during preparation, construction, operation and demolition/restoration.

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

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

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

(2) Fish, avian and wildlife (all species of concern, as well as threatened and endangered species);

(3) Fish, avian and wildlife habitat;

(4) Criminal activity (vandalism, theft, trespass, etc). Include a plan and proposed actions to avoid, minimize or mitigate negative impacts.

(5) Open space, scenic, historic, cultural and archaeological resources as identified and inventoried in the Comprehensive Plan. The applicant shall

consult with the Confederated Tribes of the Umatilla Indian Reservation on developing an inventory of these resources.

(1) A Dismantling, Decommissioning and Restoration Plan of all components of the Wind Power Generation Facility, as provided in §152.616 (HHH) (7).

(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 a "rural residence" is defined as a legal, ~~conforming~~ single family dwelling existing (or for which an application has been submitted in good faith) on a unit of land the parcel at the time an application is submitted deemed complete 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 centerline of the turbine tower to the center point of the 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.

(46) 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 setback 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.

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

(c) The development and operation of the Wind Power Generation Facility will include reasonable efforts to

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

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

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

(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.

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

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

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

(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).

(i) A Covenant Not to Sue with regard to generally accepted farming practices shall be recorded with the County. Generally accepted farming practices shall be consistent with the definition of Farming Practices under ORS 30.930. . The Wind Power Generation Facility owner/operator shall covenant not to sue owners, operators, contractors, employees, or invitees of property zoned for farm use for generally accepted farming practices.

(j) Roads.

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

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

(k) Demonstrate compliance with the standards found in OAR 660-033-0130 (37).

(l) Submit a plan for dismantling of uncompleted construction and/or decommissioning and/or re-powering of the Wind Power Generation Facility as described in §152.616 (HHH) (7).

(m) A surety bond shall be established to cover the cost of dismantling

uncompleted construction and/or decommissioning of the Wind Power Generation Facility, and site rehabilitation pursuant to §152.616 (HHH) (7) and (8). The intent of this requirement is to guarantee performance (not just provide financial insurance) to protect the public interest and the county budget from unanticipated, unwarranted burden to decommission wind projects. For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement.

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

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

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

(q) Submit a Socioeconomic Assessment of the Wind Power Generation Facility.

(7) *Dismantling/Decommissioning.*

A plan for dismantling and/or decommissioning that provides for completion of dismantling or decommissioning of the Wind Power Generation Facility without significant delay and protects public health, safety and the

Commissioner Givens asked Ms. Hughes to elaborate about what jobs these projects would provide to a community. She replied that turbine maintenance positions, with a starting salary of \$40,000-\$50,000 per year, would be available. There were also indirect benefits from having more families in the community, spending money. A 100 megawatt project would provide jobs for approximately 30 people. There would be hundreds of workers employed during the construction phase. Discussion followed on wind energy as a commodity exported out of state. Commissioner Givens commented that no other agricultural product that was exported had as many side effects as wind production. He further stated that the majority of employees during the construction phase of Combine Hills were from out of state, and not hired from the local community. Once the project was completed, it resulted in only six maintenance/operations positions. Commissioner Givens stated that a project did not always produce the economic and employment benefits as described by the developers. Ms. Parsons stated that they try to hire locally for their projects, and they could not control where people chose to live.

Commissioner Doherty asked Ms. Hughes and Ms. Parsons to discuss the differences between going through the local county siting process and going through EFSC. Both speakers stated that they were very interested in the outcome of this hearing, and were glad that Umatilla County was reviewing and amending the ordinance.

Commissioner Givens asked Ms. Hughes and Ms. Parsons to discuss how Umatilla County could improve the SIP agreements. Ms. Hughes replied that this can be done by negotiating with the developers during the siting process. Some factors that affect the SIP amounts were the tax revenues and the timeline of how long the project had been online.

Public Testimony: Mark Bastasch, 2020 SW 4th Ave, Portland, OR, 97210, acoustical engineer. Mr. Bastasch stated that he had been involved in organizing two international noise conferences in Berlin, Germany and Rome. He presented a power point presentation to the Commissioners. He explained how sound and noise was transmitted and measured. Sound was expressed in terms of decibels, and this was a measurement of pressure. There was also a measurement of sound coming from a turbine that was called the sound power level, typically between 100-110 scale. He discussed the complexity of how sound was measured, and what factors would go into determining the decibel levels (distance, atmospheric absorption) of a wind farm. The decibel levels were also affected by the number of turbines involved.

Mr. Bastasch stated that he had been on a multidisciplinary sound advisory panel, established to respond to concerns raised in regards to health issues related to wind farms. This panel was funded by the wind industry. The panel studied low frequency sound impacts, Vibracoustic Disease (VAD) and Wind Turbine Syndrome (WTS). They determined that the low levels of sound from turbines were not distinguishable from background sounds. VAD was found to be associated with a very high level of exposure to low level sounds. WTS was a hypothesis based on a study conducted by Dr. Nina Pierpont, based on a small group of ten families. Mr. Bastasch stated that her study was not subjected to the typical peer review process and medical examinations that

studies would normally go through. They did take Dr. Pierpont's findings seriously, but the panel found that the low level sounds did not exceed harmful levels as described in Dr. Pierpont's book. The symptoms described in this book were very similar to annoyance, in which a small portion of sensitive people respond to all sounds, not just wind turbine sounds. The panel's conclusions were that sub-audible or low frequency sounds from wind turbines did not present a risk to human health.

Mr. Bastasch discussed some studies field studies done on existing wind projects to document the noise levels. These studies showed that the wind projects complied with the international criteria at 1000 feet, and that infrasound occurred naturally in the environment. These higher noise measurements were associated with the older models of turbines. He explained the Oregon noise standards, and how they were among the most restrictive in the entire world at 36 dBA. The Netherlands and New Zealand have higher standards (41 dBA at night) and 35-40 dBA. Their criteria's were based on limiting the potential for annoyance and sleep disturbance.

Commissioner Givens asked why the Netherlands picked 41 dBA at night, and Mr. Bastasch replied that they wanted to primarily limit sleep disturbance. The 41 dBA level was based on a public health agency review of community consensus for wind projects, and the design was for the most restrictive criteria for developers. Commissioner Givens asked about the suggested 2 mile setbacks and how the sound level would be affected by distance. Mr. Bastasch replied that they don't establish a distance; that is left up to the developer and what type of turbine and array being used. The Netherlands establish their setbacks based on noise standards. Discussion followed on how distance affected the noise standards. Commissioner Hansell commented that Oregon had a 36 dBA standard, with a quarter mile setback. Mr. Bastasch stated that Oregon standards did not utilize a distance setback. He said that the 36 dBA noise standard typically resulted in a half mile setback, and participants had the option of signing the noise easement. It all depended on the geometry of the array and the type of turbines being used. Commissioner Givens asked what affects climate had on the noise levels. Mr. Bastasch replied that it was a common misunderstanding that the turbine noise was thought to increase with the wind speed, but their studies did not show this. He explained that humidity and temperature could play a role in sound production in dryer climates.

Commissioner Hansell asked Mr. Bastasch what he would suggest for setbacks. Mr. Bastasch replied that this would depend on what they wanted to the setback to accomplish. He stated that the Oregon noise rules were the current law, and they had been proved out. Any facility approved by EFSC had not encountered any problems with noise standards compliance. Commissioner Hansell asked how developers would know how the noise would affect pre-existing homes, and Mr. Bastasch replied that the modeling took care of this for them. EFSC used the maximum noise model with propagation factors such as humidity and temperature figured in. These studies were done by professionals and reviewed by acoustical professionals. He believed that having a credible noise study would satisfy the criteria, establishing the decibel level instead of using distance as the standard. It would be a very site specific issue due to the geography

of each project. Mr. Bastasch confirmed that they have not found any credible evidence to correlate low level noise and adverse health effects. Commissioner Givens asked if this was still true if the number of turbines were increased. Mr. Bastasch stated that the information was based on the models done by the international panel.

Commission Doherty asked Mr. Bastasch who selected the panel of experts for the panel. Mr. Bastasch stated that they had approached the national academies, medical professional agencies and higher education institutions. He stated that these groups did not want to participate, or stated that it would take too long or that they had no interest or expertise in the subject matter. Mr. Bastasch explained that the participants were awarded a small contract to assist in putting together this review. Since this panel was conducted, the chief health officers from Ontario and Australia had both reached similar conclusions. Commissioner Doherty asked Mr. Bastasch to confirm that his report today stated that there were no potential health issues and that people's concerns are baseless. Mr. Bastasch replied that what they were saying is that there was no credible evidence to suggest there are adverse health impacts, but there was the potential for annoyance. Commissioner Doherty asked if annoyance could potentially cause health impacts. Mr. Bastasch replied that all the symptoms expressed were consistent with high levels of annoyance. Discussion followed on the impact of annoyance to a sensitive population, and if this had the potential to produce actual symptoms of health impact.

Commissioner Givens moved to accept the presentation into the record as Exhibit #89, and Commissioner Doherty seconded the motion. Motion carried 3:0. Discussion followed about annoyance and could it lead to health impacts, and people who are sensitive to noise. Commissioner Doherty stated that people had become conditioned to noise, but could they become conditioned to annoyance. Commissioner Hansell asked Mr. Bastasch if there had been any reviews of the panel's conclusions. Mr. Bastasch replied that there were critiques from opposition groups because the wind industry funded the study and panel.

Commissioner Hansell called for a lunch break at 12:27 p.m.

Commissioner Hansell reconvened the hearing at 1:35 p.m.

Commissioner Givens moved to accept a letter from Cosner's as Exhibit #90, and Commissioner Doherty seconded the motion. Motion carried 3:0.

→ Public Testimony: Joy Potter, 53 SW Yamhill St, Portland, OR, 97204, representing Horizon Wind Energy. Mrs. Potter discussed the impact of wind farms on tourism. There had been concerns raised about the effect of wind development on the wine industry in the Walla Walla valley area. She spoke about the Wildhorse Wind Farm that opened in April 2008 in Kittitas County, Washington. To date, they have had 65,000 visitors to their wind farm between the months of April and November annually. In 2010, there were visitors from 7 continents and all 50 states. They believed that tourism increased in that county due to the presence of the wind farm. Another project near

Jim Hatley Testimony
Umatilla Board of County Commissioners
August 16, 2012

Exhibit 5
(26 pages)

**(May 19, 2011 Submittal of Elaine Albrich in Support of
Testimony of Mark Bastasch)**



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MAY 20 2011

UMATILLA COUNTY
PLANNING DEPARTMENT

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May 19, 2011

VIA OVERNIGHT DELIVERY

Umatilla County Board of Commissioners
c/o Tamra Mabbott
216 SE Fourth Street
Pendleton, OR 97801

Re: Written Comments on UCDC 152.616(HHH)

Dear Commissioners:

First, thank you for allowing us the opportunity to present coordinated testimony at the May 12th Board hearing on the proposed amendments to UCDC 152.616(HHH). Hopefully we were able to answer your questions and provide you with scientifically- and technically-sound information to inform your decision-making.

I want to take another opportunity to encourage the Board to adopt as its own those suggested code revisions outlined in the Green Paper. With respect to setbacks, while we believe our earlier recommended setbacks (based on the current EFSC setbacks) are preferable because they are consistent with the Oregon DEQ noise rules and protective of public health and safety, we understand the Board recommended a 0.5 mile/1 mile setback from rural residences in an effort to reach a compromise between what is currently allowed under the UCDC and what has been advocated for by some members of the public and Planning Commission. We believe the Green Paper suggestions offer helpful clarification and make clear that a waiver is always available. Moreover, our suggestions are based on reliable and peer-reviewed evidence that we have provided into the record. To further support the recommendations in the Green Paper, I am providing additional materials referenced in Mark Bastasch's presentation.

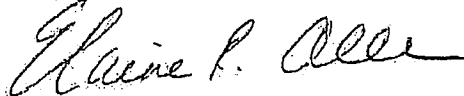
I think it is critical to emphasize the importance of ensuring that the Board's decision is based on substantial evidence in the record, consistent with the legal notices provided to date, and follows proper land use procedures. During this process, the County has been considering amendments to UCDC 152.616(HHH), which as I discussed during my testimony on May 12th, provides conditional use standards and criteria for wind energy facilities. This code section cannot be amended or revised to restrict, or otherwise exclude, a specific conditional use by zone or geographic area. To accomplish this, the County would need to initiate a subsequent

Umatilla County Board of Commissioners
May 19, 2011
Page 2

comprehensive plan and zoning map/text amendment process. While this may be something the County wants to consider, it cannot be addressed through this proceeding. Further, singling out wind energy development for issues like road construction and potential impacts to watersheds is unjustified. If watershed concerns are something the County opts to consider at a later date, all development activities should be treated equal throughout the County.

Thank you for your consideration and we look forward to the opportunity to review and comment on the next version of the proposed UCDC 152.616(HHH) amendments.

Very truly yours,



Elaine R. Albrich

Enclosures

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MAY 24 2011

UMATILLA COUNTY
PLANNING DEPARTMENT



Wind Turbines and Health

A Rapid Review of the Evidence

July 2010

00082

Wind Turbines and Health – A Rapid Review of the Evidence

The purpose of this paper is to present findings from a rapid review of the evidence from current literature on the issue of wind turbines and potential impacts on human health. In particular the paper seeks to ascertain if the following statement can be supported by the evidence: *There are no direct pathological effects from wind farms and that any potential impact on humans can be minimised by following existing planning guidelines.* This statement is supported by the 2009 expert review commissioned by the American and Canadian Wind Energy Associations (Colby et al. 2009).

Context

In Australia, since the legislation of the *Renewable Energy (Electricity) Act* in 2000, wind power has been gaining prominence as a viable sustainable alternative to more traditional forms of energy production. Studies have found that there is increasing population demand for 'green' energy and that people are willing to pay a premium for renewable energy (Chatham-Kent Public Health Unit, 2008; Pedersen & Persson Waye, 2007). However as with any shift in technology, the emergence of wind farms is not without controversy.

There are two opposing viewpoints regarding wind turbines and their potential effect on human health. It is important to note that these views are frequently presented by groups or people with vested interests. For example, wind energy associations purport that there is no evidence linking wind turbines to human health concerns. Conversely, individuals or groups who oppose the development of wind farms contend that wind turbines can adversely impact the health of individuals living in proximity to wind farms.

Concerns regarding the adverse health impacts of wind turbines focus on the effects of infrasound, noise, electromagnetic interference, shadow flicker and blade glint produced by wind turbines. Does the evidence support these concerns?

Sound and Noise from Wind Turbines

Sound is composed of frequency expressed as hertz (Hz) and pressure expressed as decibels (dB). In terms of frequency sound can be categorised as audible and inaudible. Infrasound is commonly defined as sound which is inaudible to the human ear (below 16 Hz). Despite this commonly used definition, infrasound can be audible (EPHC, 2009). There is often confusion regarding the boundary between infrasound and low frequency noise (Leventhall, 2006). Human sensitivity to sound, especially to low frequency sound, is variable and people will exhibit variable levels of tolerance to different frequencies (Minnesota Department of Health, 2009).

Noise can be defined as any undesirable or unwanted sound. The perception of the noise is also influenced by the attitude of the hearer towards the sound source. This is sometimes called the nocebo effect, which is the opposite of the better known placebo effect. If people have been preconditioned to hold negative opinions about a noise source, they are more likely to be affected by it (AusWEA, 2004).

Wind turbines produce noise that can be classified into the following categories:

1. Mechanical noise which is produced from the motor or gearbox; if functioning correctly, mechanical noise from modern wind turbines should not be an issue.
2. Aerodynamic noise which is produced by wind passing over the blade of the wind turbine (Minnesota Department of Health, 2009).

As well as the general audible range of sound emissions, wind turbines also produce noise that includes a range of Special Audible Characteristics (SACs) such as amplitude modulation, impulsivity, low frequency noise and tonality (EPHC, 2009).

Table 1 compares the noise produced by a ten turbine wind farm compared to noise levels from some selected activities.

Activity	Sound pressure level (dBA) ¹
Jet aircraft at 250m	105
Noise in a busy office	60
Car travelling at 64kph at 100m	55
Wind farm (10 turbines) at 350m	35-45
Quiet bedroom	35
Background noise in rural area at night	20-40

Table 1: Noise levels compared to ten turbine wind farm (SDC, 2005).

Macintosh and Downie (2006) conclude that based on these figures "noise pollution generated by wind turbines is negligible".

One of the most common assertions regarding potential adverse noise impacts of wind turbines is concerned with low frequency noise and infrasound. It should be noted that infrasound is constantly present in the environment and is caused by various sources such as ambient air turbulence, ventilation units, ocean waves, distant explosions, volcanic eruptions, traffic, aircraft and other machinery (Rogers, Manwell & Wright, 2006). In relation to wind turbines, Leventhall (2006) concludes that there is insignificant infrasound generated by wind turbines and that there is normally little low frequency noise. A survey of all known published results of infrasound from wind turbines found that wind turbines of contemporary design, where rotor blades are in front of the tower, produce very low levels of infrasound (Jakobsen, 2005). Another recent report concludes that wind farm noise does not have significant low-frequency or infrasound components (Ministry of the Environment, 2007). As discussed in further detail below the principal human response to audible infrasound is annoyance (Rogers, 2006).

Effects of Noise from Wind Turbines on Human Health

The health and well-being effects of noise on people can be classified into three broad categories:

¹ The "A" represents a weighting of measured sound to mimic that discernable by the human ear, which does not perceive sound at low and high frequencies to be as loud as mid range frequencies (AusWEA, nd. a).

1. subjective effects including annoyance, nuisance and dissatisfaction;
2. interference with activities such as speech, sleep and learning; and
3. physiological effects such as anxiety, tinnitus or hearing loss (Rogers, Manwell & Wright, 2006).

Several commentators argue that noise from wind turbines only produces effects in the first two categories (Rogers, 2006; Pedersen & Persson Waye, 2007).

Various studies of wind turbine effects on health have concentrated on the self-reported perception of annoyance. There are difficulties with measuring and quantifying subjective effects of noise such as annoyance. According to the World Health Organization (WHO) (1999) annoyance is an adverse health effect, though this is not universally accepted. Kalveram proposes that annoyance is not a direct health effect but an indication that a person's capacity to cope is under threat. The person has to resolve the threat or their coping capacity is undermined, leading to stress related health effects (Kalveram 2000). Some people are very annoyed at quite low levels of noise, whilst others are not annoyed by high levels.

It has been suggested that if people are worried about their health they may become anxious, causing stress related illnesses. These are genuine health effects arising from their worry, which arises from the wind turbine, even though the turbine may not objectively be a risk to health (Chapman 2010). The measurement of health effects attributable to wind turbines is therefore very complex.

One study of wind turbine noise and annoyance found that no adverse health effects other than annoyance could be directly correlated with noise from wind turbines. The authors concluded that reported sleep difficulties, as well as feelings of uneasiness, associated with noise annoyance could be an effect of the exposure to noise, although it could just as well be that respondents with sleeping difficulties more easily appraised the noise as annoying (Pedersen & Persson Waye, 2007).

Many factors can influence the way noise from wind turbines is perceived. The aforementioned study also found that being able to see wind turbines from one's residence increased not just the odds of perceiving the sound, but also the odds of being annoyed, suggesting a multimodal effect of the audible and visual exposure from the same source leading to an enhancement of the negative appraisal of the noise by the visual stimuli (Pedersen & Persson Waye, 2007). Another study of residents living in the vicinity of wind farms in the Netherlands found that annoyance was strongly correlated with a negative attitude toward the visual impact of wind turbines on the landscape. The study also concluded that people who benefit economically from wind turbines were less likely to report noise annoyance, despite exposure to similar sound levels as those people who were not economically benefiting (Pedersen et al, 2009).

In addition to audible noise, concerns have been raised about infrasound from wind farms and health effects. It has been noted that the effects of low frequency infrasound (less than 20Hz) on humans are not well understood (NRC, 2007). However, as discussed above, several authors have suggested that low level frequency noise or infrasound emitted by wind turbines is minimal and of no consequence (Leventhall, 2006; Jakobsen, 2005). Further, numerous reports have concluded that there is no evidence of health effects arising from infrasound or low frequency noise

generated by wind turbines (DTI, 2006; CanWEA, 2009; Chatham-Kent Public Health Unit, 2008; WHO, 2004; EPHC, 2009; HGC Engineering, 2007). In summary:

- 'There is no reliable evidence that infrasounds below the hearing threshold produce physiological or psychological effects' (Berglund & Lindvall 1995).
- Infrasound associated with modern wind turbines is not a source which will result in noise levels which may be injurious to the health of a wind farm neighbour (DTI, 2006).
- Findings clearly show that there is no peer-reviewed scientific evidence indicating that wind turbines have an adverse impact on human health (CanWEA, 2009).
- Sound from wind turbines does not pose a risk of hearing loss or any other adverse health effects in humans. Subaudible, low frequency sounds and infrasound from wind turbines do not present a risk to human health (Colby, et al 2009).
- The Chatham-Kent Public Health Unit (Ontario, Canada) reviewed the current literature regarding the known health impacts of wind turbines in order to make an evidence-based decision. Their report concluded that current evidence failed to demonstrate a health concern associated with wind turbines. 'In summary, as long as the Ministry of Environment Guidelines for location criteria of wind farms are followed ... there will be negligible adverse health impacts on Chatham-Kent citizens. Although opposition to wind farms on aesthetic grounds is a legitimate point of view, opposition to wind farms on the basis of potential adverse health consequences is not justified by the evidence' (Chatham-Kent Public Health Unit, 2008).
- Wind energy is associated with fewer health effects than other forms of traditional energy generation and in fact will have positive health benefits (WHO, 2004).
- 'There are, at present, very few published and scientifically-validated cases of an SACs of wind farm noise emission being problematic ... the extent of reliable published material does not, at this stage, warrant inclusion of SACs ... into the noise impact assessment planning stage (EPHC, 2009).
- While a great deal of discussion about infrasound in connection with wind turbine generators exists in the media there is no verifiable evidence for infrasound and production by modern turbines (HGC Engineering, 2007).

The opposing view is that noise from wind turbines produces a cluster of symptoms which has been termed Wind Turbine Syndrome (WTS). The main proponent of WTS is a US based paediatrician, Dr Pierpont, who has released a book 'Wind Turbine Syndrome: A report on a Natural Experiment, presents case studies explaining WTS symptoms in relation to infrasound and low frequency noise. Dr Pierpont's assertions are yet to be published in a peer-reviewed journal, and have been heavily criticised by

acoustic specialists. Based on current evidence, it can be concluded that wind turbines do not pose a threat to health if planning guidelines are followed.

Shadow Flicker and Blade Glint

Shadow flicker occurs when the sun is located behind a wind turbine casting a shadow that appears to flick on and off as the wind turbine blades rotate (Chatham-Kent Public Health Unit, 2008). It is possible to use modelling software to model shadow flicker before the finalisation of a wind farm layout and siting.

Blade glint occurs when the surface of wind turbine blades reflect the sun's light and has the potential to annoy people (EPHC, 2009).

Effects of Shadow Flicker and Blade Glint on Human Health

Shadow flicker from wind turbines that interrupts sunlight at flash frequencies greater than 3Hz has the potential to provoke photosensitive seizures (Harding, Harding & Wilkins, 2008). As such it is recommended that to circumvent potential health effects of shadow flicker wind turbines should only be installed if flicker frequency remains below 2.5 Hz under all conditions (Harding, Harding & Wilkins, 2008).

According to the EPHC (2009) there is negligible risk of seizures being caused by modern wind turbines for the following reasons:

- less than 0.5% of the population are subject to epilepsy at any one time, and of these, approximately 5% are susceptible to strobing light;
- Most commonly (96% of the time), those that are susceptible to strobe lighting are affected by frequencies in excess of 8 Hz and the remainder are affected by frequencies in excess of 2.5 Hz. Conventional horizontal axis wind turbines cause shadow flicker at frequencies of around 1 Hz or less;
- alignment of three or more conventional horizontal axis wind turbines could cause shadow flicker frequencies in excess of 2.5 Hz; however, this would require a particularly unlikely turbine configuration.

In summary, the evidence on shadow flicker does not support a health concern (Chatham-Kent Public Health Unit, 2008) as the chance of conventional horizontal axis wind turbines causing an epileptic seizure for an individual experiencing shadow flicker is less than 1 in 10 million (EPHC, 2009). As with noise, the main impact associated with shadow flicker from wind turbines is annoyance.

In regards to blade glint, manufacturers of all major wind turbine blades coat their blades with a low reflectivity treatment which prevents reflective glint from the surface of the blade. According to the Environment Protection and Heritage Council (EPHC) the risk of blade glint from modern wind turbines is considered to be very low (EPHC, 2009).

Electromagnetic Radiation and Interference

Electromagnetic radiation (EMR) is a wavelike pattern of electric and magnetic energy moving together. Types of EMR include X-rays, ultraviolet, visible light, infrared and radio waves (AusWEA, nd. b).

Electromagnetic interference (EMI) from wind turbines may affect electromagnetic or radiocommunication signals including broadcast radio and television, mobile phones and radar (EPHC, 2009).

As high and exposed sites are best from a wind resource perspective, it is not unusual for any of a range of telecommunications installations, radio and television masts, mobile phone base stations or emergency service radio masts to be located nearby. Care must be taken to ensure that wind turbines do not passively interfere with these facilities by directly obstructing, reflecting or refracting their radio frequency EMR signals.

Effects of Electromagnetic Radiation and Interference from Wind Turbines on Human Health

Electromagnetic Fields (EMF) emanate from any wire carrying electricity and Australians are routinely exposed to these fields in their everyday lives. The electromagnetic fields produced by the generation and export of electricity from a wind farm do not pose a threat to public health (Windrush Energy 2004). The closeness of the electrical cables between wind turbine generators to each other, and shielding with metal armour effectively eliminate any EMF (AusWEA, nd. b).

Measures to Mitigate Potential Impacts of Wind Turbines

As with the introduction of any new technology, some communities are against wind farms being located in their area. Some factors which may increase community concern include coerced or unequal exposure, industrial, exotic and/or memorable nature of the turbine, dreaded, unknown or catastrophic consequences, substantial media attention, potential for collective action and a process which is unresponsive to the community. Voluntary exposure, for example choosing to house the turbine on community land, reduces concern (Adapted by Professor Chapman from Covello et al. methodology 1986).

One review of wind turbines and noise recommends that best practice guidelines such as those identifying potential receptors of turbine noise, following established setbacks and dispelling rumours regarding infrasound which have not been supported by research, are followed in order to mitigate any potential noise issues associated with wind turbines (Howe, 2007).

Sustainable Energy Authority Victoria (2003) also recommend that complying with standards relating to turbine design and manufacturing, site evaluation and final siting of wind turbines will minimise any potential impacts on the surrounding area.

The recently released Draft National Wind Farm Development Guidelines (EPHC, 2009) include detailed methodologies at different stages of the planning and development process to assess such issues as noise and shadow flicker to mitigate any potential impact. Such processes include a range of measures such as high-level risk assessment, data collection, impact assessment, detailed technical studies and public consultation.

Therefore if planning guidelines are followed and communities are consulted with in a meaningful way, resistance to wind farms is likely to be reduced and annoyance and related health effects avoided.

Conclusion

The health effects of many forms of renewable energy generation, such as wind farms, have not been assessed to the same extent as those from traditional sources. However, renewable energy generation is associated with few adverse health effects compared with the well documented health burdens of polluting forms of electricity generation (Markandya & Wilkinson, 2007).

This review of the available evidence, including journal articles, surveys, literature reviews and government reports, supports the statement that: *There are no direct pathological effects from wind farms and that any potential impact on humans can be minimised by following existing planning guidelines.*

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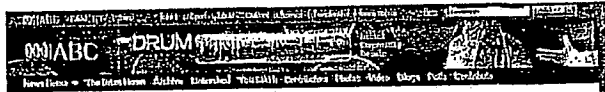
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Paul Henry Shuster

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By Paul Henry Shuster



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ABC Analysis

- 1. The wind turbine industry is growing rapidly, but it is still in its infancy.
- 2. The industry is facing a number of challenges, including the need for more funding and the need to overcome public opposition.
- 3. The industry is also facing a number of opportunities, including the need for more energy and the need to reduce carbon emissions.
- 4. The industry is also facing a number of risks, including the need for more funding and the need to overcome public opposition.
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News Just In

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PLANNING DEPARTMENT

The Potential Health Impact of Wind Turbines

Chief Medical Officer of Health (CMOH) Report
May 2010

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Summary of Review

This report was prepared by the Chief Medical Officer of Health (CMOH) of Ontario in response to public health concerns about wind turbines, particularly related to noise.

Assisted by a technical working group comprised of members from the Ontario Agency for Health Protection and Promotion (OAHPP), the Ministry of Health and Long-Term Care (MOHLTC) and several Medical Officers of Health in Ontario with the support of the Council of Ontario Medical Officers of Health (COMOH), this report presents a synopsis of existing scientific evidence on the potential health impact of noise generated by wind turbines.

The review concludes that while some people living near wind turbines report symptoms such as dizziness, headaches, and sleep disturbance, the scientific evidence available to date does not demonstrate a direct causal link between wind turbine noise and adverse health effects. The sound level from wind turbines at common residential setbacks is not sufficient to cause hearing impairment or other direct health effects, although some people may find it annoying.

1

Introduction

In response to public health concerns about wind turbines, the CMOH conducted a review of existing scientific evidence on the potential health impact of wind turbines in collaboration and consultation with a technical working group composed of members from the OAHPP, MOHLTC and COMO H.

A literature search was conducted to identify papers and reports (from 1970 to date) on wind turbines and health from scientific bibliographic databases, grey literature, and from a structured Internet search. Databases searched include MEDLINE, PubMed, Environmental Engineering Abstracts, Environment Complete, INSPEC, Scholars Portal and Scopus. Information was also gathered through discussions with relevant government agencies, including the Ministry of the Environment and the Ministry of Energy and Infrastructure and with input provided by individuals and other organizations such as Wind Concerns Ontario.

In general, published papers in peer-reviewed scientific journals, and reviews by recognized health authorities such as the World Health Organization (WHO) carry more weight in the assessment of health risks than case studies and anecdotal reports.

The review and consultation with the Council of Ontario Medical Officers of Health focused on the following questions:

- What scientific evidence is available on the potential health impacts of wind turbines?
- What is the relationship between wind turbine noise and health?
- What is the relationship between low frequency sound, infrasound and health?
- How is exposure to wind turbine noise assessed?
- Are Ontario wind turbine setbacks protective from potential wind turbine health and safety hazards?
- What consultation process with the community is required before wind farms are constructed?
- Are there data gaps or research needs?

The following summarizes the findings of the review and consultation.

2

Wind Turbines and Health

2.1 Overview

A list of the materials reviewed is found in Appendix 1. It includes research studies, review articles, reports, presentations, and websites.

Technical terms used in this report are defined in a Glossary (Page 11).

The main research data available to date on wind turbines and health include:

- Four cross-sectional studies, published in scientific journals, which investigated the relationships between exposure to wind turbine noise and annoyance in large samples of people (351 to 1,948) living in Europe near wind turbines (see section 2.2).
- Published case studies of ten families with a total of 38 affected people living near wind turbines in several countries (Canada, UK, Ireland, Italy and USA) (Pierpont 2009). However, these cases are not found in scientific journals. A range of symptoms including dizziness, headaches, and sleep disturbance, were reported by these people. The researcher (Pierpont) suggested that the symptoms were related to wind turbine noise, particularly low frequency sounds and infrasound, but did not investigate the relationships between noise and symptoms. It should be noted that no conclusions on the health impact of wind turbines can be drawn from Pierpont's work due to methodological limitations including small sample size, lack of exposure data, lack of controls and selection bias.
- Research on the potential health and safety hazards of wind turbine shadow flicker, electromagnetic fields (EMFs), ice throw and ice shed, and structural hazards (see section 2.3).

A synthesis of the research available on the potential health impacts of exposure to noise and physical hazards from wind turbines on nearby residents is found in sections 2.2 and 2.3, including research on low frequency sound and infrasound. This is followed by information on wind turbine regulation in Ontario (section 3.0), and our conclusions (section 4.0).

2.2. Sound and Noise

Sound is characterized by its sound pressure level (loudness) and frequency (pitch), which are measured in standard units known as decibel (dB) and Hertz (Hz), respectively. The normal human ear perceives sounds at frequencies ranging from 20Hz to 20,000 Hz. Frequencies below 200 Hz are commonly referred to as "low frequency sound" and those below 20Hz as "infrasound," but the boundary between them is not rigid. There is variation between people in their ability to perceive sound. Although generally considered inaudible, infrasound at high-enough sound pressure levels can be audible to some people. Noise is defined as an unwanted sound (Rogers et al. 2006, Leventhall 2003).

Wind turbines generate sound through mechanical and aerodynamic routes. The sound level depends on various factors including design and wind speed. Current generation upwind model turbines are quieter than older downwind models. The dominant sound source from modern wind turbines is aerodynamic, produced by the rotation of the turbine blades through air. The aerodynamic noise is present at all frequencies, from infrasound to low frequency to the normal audible range, producing the characteristic "swishing" sound (Leventhall 2006, Colby et al. 2009).

Environmental sound pressure levels are most commonly measured using an A-weighted scale. This scale gives less weight to very low and very high frequency components that is similar to the way the human ear perceives sound. Sound levels around wind turbines are usually predicted by modelling, rather than assessed by actual measurements.

The impact of sound on health is directly related to its pressure level. High sound pressure levels (>75dB) could result in hearing impairment depending on the duration of exposure and sensitivity of the individual. Current requirements for wind turbine setbacks in Ontario are intended to limit noise at the nearest residence to 40 dB (see section 3). This is a sound level comparable to indoor background sound. This noise limit is consistent with the night-time noise guideline of 40 dB that the World Health Organization (WHO) Europe recommends for the protection of public health from community noise. According to the WHO, this guideline is below the level at which effects on sleep and health occurs. However, it is above the level at which complaints may occur (WHO 2009).

Available scientific data indicate that sound levels associated with wind turbines at common residential setbacks are not sufficient to damage hearing or to cause other direct adverse health effects, but some people may still find the sound annoying.

Studies in Sweden and the Netherlands (Pedersen et al. 2009, Pedersen and Waye 2008, Pedersen and Waye 2007, Pedersen and Waye 2004) have found direct relationships between modelled sound pressure level and self-reported perception of sound and annoyance. The association between sound pressure level and sound perception was stronger than that with annoyance. The sound was annoying only to a small percentage of the exposed people; approximately 4 to 10 per cent were very annoyed at sound levels between 35 and 45dBA. Annoyance was strongly correlated with individual perceptions of wind turbines. Negative attitudes, such as an aversion to the visual impact of wind turbines on the landscape, were associated with increased annoyance, while positive attitudes, such as direct economic benefit from wind turbines, were associated with decreased annoyance. Wind turbine noise was perceived as more annoying than transportation or industrial noise at comparable levels, possibly due to its swishing quality, changes throughout a 24 hour period, and lack of night-time abatement.

2.2.1 Low Frequency Sound, Infrasound and Vibration

Concerns have been raised about human exposure to "low frequency sound" and "infrasound" (see section 2.2 for definitions) from wind turbines. There is no scientific evidence, however, to indicate that low frequency sound generated from wind turbines causes adverse health effects.

Low frequency sound and infrasound are everywhere in the environment. They are emitted from natural sources (e.g., wind, rivers) and from artificial sources including road traffic, aircraft, and ventilation systems. The most common source of infrasound is vehicles. Under many conditions, low frequency sound below 40Hz from wind turbines cannot be distinguished from environmental background noise from the wind itself (Leventhall 2006, Colby et al 2009).

Low frequency sound from environmental sources can produce annoyance in sensitive people, and infrasound at high sound pressure levels, above the threshold for human hearing, can cause severe ear pain. There is no evidence of adverse health effects from infrasound below the sound pressure level of 90dB (Leventhall 2003 and 2006).

Studies conducted to assess wind turbine noise indicate that infrasound and low frequency sounds from modern wind turbines are well below the level where known health effects occur, typically at 50 to 70dB.

A small increase in sound level at low frequency can result in a large increase in perceived loudness. This may be difficult to ignore, even at relatively low sound pressures, increasing the potential for annoyance (Jakobsen 2005, Leventhall 2006).

A Portuguese research group (Alves-Pereira and Castelo Branco 2007) has proposed that excessive long-term exposure to vibration from high levels of low frequency sound and infrasound can cause whole body system pathology (vibro-acoustic disease). This finding has not been recognized by the international medical and scientific community. This research group also hypothesized that a family living near wind turbines will develop vibro-acoustic disease from exposure to low frequency sound, but has not provided evidence to support this (Alves-Pereira and Castelo Branco 2007).

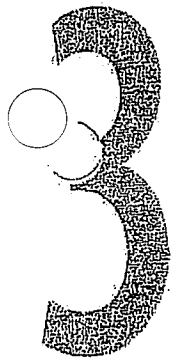
2.2.2 Sound Exposure Assessment

Little information is available on actual measurements of sound levels generated from wind turbines and other environmental sources. Since there is no widely accepted protocol for the measurement of noise from wind turbines, current regulatory requirements are based on modelling (see section 3.0).

2.3 Other Potential Health Hazards of Wind Turbines

The potential health impacts of electromagnetic fields (EMFs), shadow flicker, ice throw and ice shed, and structural hazards of wind turbines have been reviewed in two reports (Chatham-Kent Public Health Unit 2008; Rideout et al 2010). The following summarizes the findings from these reviews.

- **EMFs**
Wind turbines are not considered a significant source of EMF exposure since emissions levels around wind farms are low.
- **Shadow Flicker**
Shadow flicker occurs when the blades of a turbine rotate in sunny conditions, casting moving shadows on the ground that result in alternating changes in light intensity appearing to flick on and off. About 3 per cent of people with epilepsy are photosensitive, generally to flicker frequencies between 5-30Hz. Most industrial turbines rotate at a speed below these flicker frequencies.
- **Ice Throw and Ice Shed**
Depending on weather conditions, ice may form on wind turbines and may be thrown or break loose and fall to the ground. Ice throw launched far from the turbine may pose a significant hazard. Ice that sheds from stationary components presents a potential risk to service personnel near the wind farm. Sizable ice fragments have been reported to be found within 100 metres of the wind turbine. Turbines can be stopped during icy conditions to minimize the risk.
- **Structural hazards**
The maximum reported throw distance in documented turbine blade failure is 150 metres for an entire blade, and 500 metres for a blade fragment. Risks of turbine blade failure reported in a Dutch handbook range from one in 2,400 to one in 20,000 turbines per year (Braam et al 2005). Injuries and fatalities associated with wind turbines have been reported, mostly during construction and maintenance related activities.



Wind Turbine Regulation in Ontario

The Ministry of the Environment regulates wind turbines in Ontario. A new regulation for renewable energy projects came into effect on September 24, 2009. The requirements include minimum setbacks and community consultations.

3.1 Setbacks

Provincial setbacks were established to protect Ontarians from potential health and safety hazards of wind turbines including noise and structural hazards.

The minimum setback for a wind turbine is 550 metres from a receptor. The setbacks rise with the number of turbines and the sound level rating of the selected turbines. For example, a wind project with five turbines, each with a sound power level of 107 dB, must have its turbines setback at a minimum 950 metres from the nearest receptor.

These setbacks are based on modelling of sound produced by wind turbines and are intended to limit sound at the nearest residence to no more than 40 dB. This limit is consistent with limits used to control noise from other environmental sources. It is also consistent with the night-time noise guideline of 40 dB that the World Health Organization (WHO) Europe recommends for the protection of public health from community noise. According to the WHO, this guideline is below the level at which effects on sleep and health occurs. However, it is above the level at which complaints may occur (WHO 2009).

Ontario used the most conservative sound modelling available nationally and internationally, which is supported by experiences in the province and in other jurisdictions (MOE 2009). As yet, a measurement protocol to verify compliance with the modelled limits in the field has not been developed. The Ministry of the Environment has recently hired independent consultants to develop a procedure for measuring audible sound from wind turbines and also to review low frequency sound impacts from wind turbines, and to develop recommendations regarding low frequency sound.

Ontario setback distances for wind turbine noise control also take into account potential risk of injury from ice throw and structural failure of wind turbines. The risk of injury is minimized with setbacks of 200 to 500 metres.

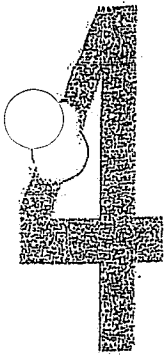
3.2 Community Consultation

The Ministry of the Environment requires applicants for wind turbine projects to provide written notice to all assessed land owners within 120 metres of the project location at a preliminary stage of the project planning. Applicants must also post a notice on at least two separate days in a local newspaper. As well, applicants are required to notify local municipalities and any Aboriginal community that may have a constitutionally protected right or interest that could be impacted by the project.

Before submitting an application to the Ministry of the Environment, the applicant is also required to hold a minimum of two community consultation meetings to discuss the project and its potential local impact. To ensure informed consultation, any required studies must be made available for public review 60 days prior to the date of the final community meeting. Following these meetings the applicant is required to submit as part of their application a Consultation Report that describes the comments received and how these comments were considered in the proposal.

The applicant must also consult directly with local municipalities prior to applying for a Renewable Energy Approval on specific matters related to municipal lands, infrastructure, and services. The Ministry of the Environment has developed a template, which the applicant is required to use to document project-specific matters raised by the municipality. This must be submitted to the ministry as part of the application. The focus of this consultation is to ensure important local service and infrastructure concerns are considered in the project.

For small wind projects (under 50 kW) the public meeting requirements above are not applicable due to their limited potential impacts.



Conclusions

The following are the main conclusions of the review and consultation on the health impacts of wind turbines:

- While some people living near wind turbines report symptoms such as dizziness, headaches, and sleep disturbance, the scientific evidence available to date does not demonstrate a direct causal link between wind turbine noise and adverse health effects.
- The sound level from wind turbines at common residential setbacks is not sufficient to cause hearing impairment or other direct adverse health effects. However, some people might find it annoying. It has been suggested that annoyance may be a reaction to the characteristic "swishing" or fluctuating nature of wind turbine sound rather than to the intensity of sound.
- Low frequency sound and infrasound from current generation upwind model turbines are well below the pressure sound levels at which known health effects occur. Further, there is no scientific evidence to date that vibration from low frequency wind turbine noise causes adverse health effects.
- Community engagement at the outset of planning for wind turbines is important and may alleviate health concerns about wind farms.
- Concerns about fairness and equity may also influence attitudes towards wind farms and allegations about effects on health. These factors deserve greater attention in future developments.

The review also identified that sound measurements at residential areas around wind turbines and comparisons with sound levels around other rural and urban areas, to assess actual ambient noise levels prevalent in Ontario, is a key data gap that could be addressed. An assessment of noise levels around wind power developments and other residential environments, including monitoring for sound level compliance, is an important prerequisite to making an informed decision on whether epidemiological studies looking at health outcomes will be useful.

Glossary

A-weighted decibels (dBA)

The sound pressure level in decibels as measured on a sound level meter using an A-weighted filter. The A-weighted filter de-emphasizes the very low and very high frequencies of the sound in a manner similar to the frequency response of the human ear.

Decibel (dB)

Unit of measurement of the loudness (intensity) of sound. Loudness of normal adult human voice is about 60-70 dB at three feet. The decibel scale is a logarithmic scale and it increases/decreases by a factor of 10 from one scale increment to the next adjacent one.

Downwind model turbines

Downwind model turbines have the blades of the rotor located behind the supporting tower structure, facing away from the wind. The supporting tower structure blocks some of the wind that blows towards the blades.

Electromagnetic fields (EMFs)

Electromagnetic fields are a combination of invisible electric and magnetic fields. They occur both naturally (light is a natural form of EMF) and as a result of human activity. Nearly all electrical and electronic devices emit some type of EMF.

Grey literature

Information produced by all levels of government, academics, business and industry in electronic and print formats not controlled by commercial publishing, i.e., where publishing is not the primary activity of the producing body.

Hertz (Hz)

A unit of measurement of frequency; the number of cycles per second of a periodic waveform.

Infrasound

Commonly refers to sound at frequencies below 20Hz. Although generally considered inaudible, infrasound at high-enough sound pressure levels can be audible to some people.

Low-frequency sound

Commonly refers to sound at frequencies between 20 and 200 Hz.

Noise

Noise is an unwanted sound.

Shadow Flicker

Shadow flicker is a result of the sun casting intermittent shadows from the rotating blades of a wind turbine onto a sensitive receptor such as a window in a building. The flicker is due to alternating light intensity between the direct beam of sunlight and the shadow from the turbine blades.

Sound

Sound is wave-like variations in air pressure that occur at frequencies that can be audible. It is characterized by its loudness (sound pressure level) and pitch (frequency), which are measured in standard units known as decibel (dB) and Hertz (Hz), respectively. The normal human ear perceives sounds at frequencies ranging from 20Hz to 20,000 Hz.

Upwind model turbines

Upwind model turbines have the blades of the rotor located in front of the supporting tower structure, similar to how a propeller is at the front of an airplane. Upwind turbines are a modern design and are quieter than the older downwind models.

Wind turbine

Wind turbines are large towers with rotating blades that use wind to generate electricity.

Appendix 1: List of Documents on Wind Turbines

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Jim Hatley Testimony
Umatilla Board of County Commissioners
August 16, 2012

Exhibit 7
(3 pages)

(Excerpts from February 15, 2012 paper of Clinton B. Reeder,
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February 15, 2012

The Umatilla County 2-Mile Setback
From Rural Homes to Wind Turbine Towers:
Making Wind Energy Development
Less Disruptive and More Productive for Local Communities and Developers

INTRODUCTION. Noise created on one property then moving from that property across other nearby properties is a trespass. Any property owner has wide latitude in what they do with their owned property; however, those rights are limited by what the adverse impacts of such freedom of action in the exercise of those rights might impose upon neighbors... reflected in numerous noise and/or nuisance ordinances in many communities. The State of Oregon has a noise standard which specifically applies to wind power development projects.

There are two primary impacts of global interest in the development of wind power: (1) the adverse impact on the market value of neighboring properties; and (2) the possible adverse health effects imposed on the neighbors to wind power facility sites, especially the wind turbine sites, which generate the primary noise originating from wind power facilities. Failure of the wind Developers to adequately address the adverse impact of wind power facilities upon their neighbors is an international issue of significant concern documented by numerous Internet websites and wind power related organizations with concerns about the adverse consequences of such unmitigated and/or considerably under-mitigated development impacts.

To a lesser extent (greater, in the minds of some people) is (3) the trespass of wind turbines into the view from a neighboring property. This impact is considered related, but yet separate and apart from the noise impact, all of which adversely impact property values. However, as long as such intrusion into the view from a property lessens the value of such a property, the view trespass issue will remain a major component of the adverse impacts of wind power development, and hence, a public policy issue of concern to any community.

Some wind developers make reference to one or more studies that specifically research property values within a ten mile circle around a wind project, and conclude that since the average property value in that circle has not been adversely impacted by the wind power project, a community can ignore such allegations of lost value. That is absolute nonsense! If land value over a ten mile circle of rural land surrounding a 1,500 acre wind turbine site continues to increase in value at maybe 2-3 percent (more or less) each year outside the noise standard boundary surrounding the wind project, but the value of property near the wind turbines falls by 50 percent, any calculation of change in average land value over the entire circle will likely be positive, not negative – but only because with such a research design, the 50% decline in the land values near the wind power project simply fades away to nothing in

home sites. Noise and blocked view, turbine blade flicker, etc. are all "trespasses" upon nearby property. Therefore, sharing the economic value associated with the projects is not only ethically and morally an issue, but a very real social and economic concern pertinent to the longer term conditions and circumstances impacting the local community. Available international information suggests very strongly that the 2-mile setback distance is the minimum setback necessary to assure appropriate, fair and equitable economic incentive to drive mitigation for rural homeowners near the wind energy projects.

V. INTENDED TO PROTECT PROPERTY VALUES AND/OR ASSURE EQUITABLE AND APPROPRIATE COMPENSATION (MITIGATION/S).

Property values for neighbors' land and homes has suffered as a result of having little or no choice but to live in close proximity to the wind turbines. This setback requirement provides the rural home owner the opportunity to significantly protect their own property values and associated interests, by (1) "Just saying NO", or (2) negotiating a mutually acceptable development agreement with the Developer. The intent is to reasonably assure no unmitigated costs or unwanted burden will be imposed on the rural homeowner, especially not loss of property values (often a family's life savings) and/or imposed adverse health effects. The international information networks identify abandoned homes, with little or no compensation near wind turbines as a significant community cost in multiple nations. On the other hand, related information also provides insight into a number of mitigation strategies that might be implemented to at least ease the economic loss and associated burdens associated with being forced to abandon a home site (*this will be the topic of a follow-up paper by this author*).

VI. INTENDED TO PROTECT GENERAL HEALTH (BROADLY DEFINED), AVOID SLEEP DISTURBANCE, AND PROTECT LEARNING and GENERAL LIFESTYLE BENEFITS FOR ADULTS AND CHILDREN.

For those citizens who are susceptible to adverse health effects of wind turbine noise, including the multitude of adverse effects from interrupted sleep, unwanted exposure to wind power noise adds to the tragedy of neighbors without recourse, without any rational means to protect their property and family's health from the adverse impact of wind power development. Some persons are apparently more susceptible to adverse health effects caused by wind turbine noise, including the adverse effects from interrupted sleep. A major problem is that most people have no idea how they might respond to wind turbine noise at the time they are first approached by a Developer and asked to sign a noise easement (waiver of protection from the turbine noise) that would permit the wind turbines to be built close to their rural homes. It is well documented by credible research, including from the military for whom such knowledge is critical, that sleep disturbances can and does adversely impact concentration, memory, mood, patience, irritability (and hence both adult's and children's learning ability) and other behaviors. This 2-mile setback now provides each family in Umatilla County the ability to protect family health in relation to wind power development, in all respects. Furthermore, it appears increasingly obvious the 2-mile setback is indeed having the intended effect on wind energy development in the county. The adverse health effects is of particular concern because there is ample evidence to support the allegation that at least part of the troubling noise is below the human threshold of hearing, allowing Developers to claim the wind turbines are too quiet to cause significant concern. However, low frequency noise from turbines that rattles the house windows could surely rattle the vestibular organs in the human ear. This 2-mile setback now provides each family the ability to protect their family's health in relation to wind power development, in all respects, if they so choose. Otherwise, they may under the terms of the county ordinance

- I. NOT INTENDED TO LIMIT TURBINE NUMBERS. The two mile setback from rural residences to wind turbine towers established in Umatilla County, Oregon in 2011 was adopted by the Umatilla County Board of Commissioners following unanimous recommendation of the Umatilla County Planning Commission. This ordinance provision was never intended to limit the number of wind towers in any wind power development project, or completely stop wind energy projects. However, if the 2-mile setback standard did not have that potential consequence, it would not function effectively as an incentive for Developers to focus positive attention on negotiating meaningful mitigation strategies to compensate for the potentially significant adverse social and economic impacts, including potential adverse health effects for some susceptible persons forced to live near the wind projects.
- II. INTENDED TO EMPOWER THE NEIGHBORS. This 2-mile setback was established as an "Empowerment Buffer" to enable the neighbors to wind power development projects to fairly and reasonably protect their property value and family health interests in the face of a development process that has for years, apparently world-wide, literally disregarded the interests of such neighbors (at least in terms of adequate, fair and equitable mitigation provisions). The economic development process itself, not just for wind power, all too often assumes negative impacts upon neighbors to the development projects as "just another cost of economic development and job creation projects". Neighbors to development projects are all too often just told to "adjust", "adapt" or "move elsewhere" – at their own cost, with little or no mitigation for lost property value and other costs and burdens. For wind power development in Umatilla County, this development model has now been significantly modified by county wind power development ordinance provisions to purposefully protect the neighbors to wind power development projects against imposed costs and other unwanted burdens and inconvenience.
- III. INTENDED TO ASSURE THAT MITIGATION FUNDING INCLUDES THE MOST DIRECTLY IMPACTED MEMBERS OF THE LOCAL COMMUNITY. Current wind project mitigation regulations do not direct that primary attention be given to mitigating the adverse effects on the nearby neighbors of wind energy projects. Hence, the project mitigation funding generally goes "To the Local Community", a strategy that buys considerable support from the local community, but not from those project neighbors who are most directly impacted. How do new streets in the village or a new boiler for the school mitigate for lost property values, adverse health effects, loss of view and other negative effects experienced directly by the nearby neighbors?
- IV. INTENDED TO FORCE A MEANINGFUL SHARING OF THE PROJECT BENEFITS (AND COSTS). Like "Waters of the State", wind is a "public resource". Yes, the site across which the wind blows (or waters flow) is generally private property; hence the rents paid to property owners who provide wind facility sites is effectively a "Wind Access Fee", for the wind itself does not belong to the property owner. The reality is that wind site rents are a windfall gain to such facility site owners. The site owners have seldom made any investment in creating or "protecting" the wind or its pattern of flow across their land. Owning the land across which wind blows is little different from owning the land across which water flows – access is the key to the resource value. Hence, sharing the overall economic benefits of wind projects with the impacted nearby home owners, to mitigate their imposed costs and impact burdens associated with project development, including potential adverse health effects, is a logical and appropriate outcome. The argument today is loud and clear, from many persons and interest groups – "Let Markets Work". That is the essential intent of the 2-mile setback, to encourage the market for wind energy facility siting access to include land under nearby

Jim Hatley Testimony
Umatilla Board of County Commissioners
August 16, 2012

Exhibit 8
(2 pages)

(Excerpts from March 17, 2011 Umatilla BOCC hearing,
testimony of Clinton B. Reeder, Ph. D.)

00112

Jim Hatley Testimony
Umatilla Board of County Commissioners
August 16, 2012

Exhibit 9
(1 page)

**(Excerpts from minutes of May 12, 2011 Umatilla BOCC
hearing - statement of Commissioner Hansell)**

review the applications. Ms. Albrich said she could not speak for the other companies, as one of the attractions to permitting through the county was the inexpensive and speedy process. She explained how the state process goes, and how their filing fees cover the entire cost of processing an application. EFSC could charge up to \$220,000.00 for an application, while the county charged \$500 for a Conditional Use Permit. Ms. Albrich did suggest increasing the charge for this review to cover the county costs.

Commissioner Hansell asked Ms. Albrich to give her thoughts on the two-mile setback. She replied that two miles was a long distance. She asked what the county hoped to accomplish with this setback and how could the county support that number with scientific data. She recommended the DEQ noise regulations as a standard. Commissioner Hansell replied that the purpose was to allow property owners more power if they didn't want the towers near their homes. The developers see this two-mile standard as a further hurdle to wind development in this county. Commissioner Givens asked how dependent the developers were on the state tax credit BETC (Business Energy Tax Credit). Sarah Parsons, Iberdrola Renewables, replied to this question. She stated that this was much more critical to development plans several years ago. The industry now understood that they cannot rely on this tax credit for large scale projects. They were in a different economy now, and the lack of the BETC could dissuade wind development in Oregon in the future. Ms. Parsons noted that every type of energy receives a subsidy from the federal government, and the percentage going to renewable energy was much less than what goes to fossil fuels. Ms. Albrich described Exhibit #93, a power point used by Iberdrola, to outline how they went about making a development decision.

Ms. Albrich recommended to the Commissioners that they close oral testimony today, including any consultation with the Planning Commission or individuals on the Planning Commission. She further recommended 30 additional days in which to submit written testimony or evidence, and then the Commissioners should hold a public hearing to deliberate and adopt their decision. She cautioned them to carefully consider the perception of who was before them presenting testimony, back and forth between the Planning Commission. There needed to be a clear process through to deliberation.

Public Testimony: Brian Wolcott, Director of the Walla Walla Basin Watershed Council. The Watershed Council submitted a letter pertaining to development issues in the watershed, and two power point presentations that were part of the record. He was speaking today about the risk of industrial development in the upper watershed area. This area has unique characteristics apart from the Columbia Plateau area where much of the other wind development had occurred in the county so far. These are the typical environmental issues that are associated with development in a watershed area; bird and bat mortality rates, impacts to terrestrial species such as deer and elk, migration patterns and water quality. This area had also been identified as a critical elk winter range habitat by the Oregon Department of Fish and Wildlife (ODFW). These heightened environmental issues need to be given more consideration in these sensitive areas.



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August 15, 2012

VIA EMAIL AND HAND DELIVERY

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Re: UCDC 152.616(HHH), Rural Residence Setback Adjustment Language

Dear Chair Givens and Commissioners Hansell and Doherty:

On behalf of Element Power ("Element"), our office is providing the following comments on the proposed rural residential setback adjustment language that you will consider at your August 16, 2012 Board hearing. Your decision on the setback adjustment language in UCDC 152.616(HHH) will have long-lasting ramifications for Umatilla County ("County"), its citizens and future economic development. Considerable time, effort and energy has been contributed by many in attempting to develop language that is balanced, clear, objective, and implementable. The language before you from the Planning Commission does not go far enough to provide the necessary bright line needed for a development standard. Instead, you should look to the language presented by the County's legal counsel.



Chair Larry Givens
Commissioner Bill Hansell
Commissioner Dennis Doherty
Page 2
August 15, 2012

Your legal counsel has identified possible options for the Board to consider during its hearing. Element agrees with County counsel and encourages the Board to adopt the language recommended in your counsel's memorandum dated August 8, 2012 ("Option 4"). Option 4 is an alternative to the Planning Commission's recommendation, and as stated by your counsel, it provides setback adjustment language that is (1) easiest for County planning staff to administer, (2) easiest for the developer and property owners alike to understand what is required, and (3) an objective test for determining what is a rural residence for purposes of UCDC 152.616(HHH).

Option 4 avoids the likely speculation, uncertainty and ambiguity that exists with the Planning Commission's recommendation. Instead of being vague, it uses mechanisms and terms already in place in the UDCD to describe the setback adjustment process. Thus, applicants will be able to use information contained in the County records to assess whether a setback will be required prior to filing an application, and property owners will know with certainty that a setback will be imposed if a zoning permit is issued for the future dwellings. It was obvious at the end of the Planning Commission hearing that there was considerable confusion, exhaustion, and unresolved debate about what should be recommended to the Board. More work was needed and consequently, it is work that must be accomplished during the Board's hearing.

Element looks forward to supporting the adoption of Option 4 at the Board's hearing and seeing a final resolution to these last code amendment issues. Thank you for your consideration of our comments during the August 16, 2012 hearing.

Very truly yours,

Elaine R. Albrich

cc: Nicole Hughes
Steve Corey
Mike Robinson

Blue Mountain Alliance

52151 Fruitvale Road
Milton-Freewater, OR 97862
www.bluemountainalliance.org
541-938-4623

August 15, 2012

Umatilla County Board of Commissioners
216 SE Fourth Street
Pendleton, OR 97801

Dear Commissioners:

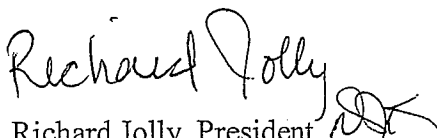
As you know, the Blue Mountain Alliance has worked with Umatilla County for several years now and we have great respect for the work that has been done that is of immense importance to our group.

There have been several significant changes made in recent years that have strengthened the Umatilla County Development Code and property rights of landowners with regards to industrial wind turbine projects. You have our respect as a result of the hundreds of hours the Planning Commission, the Board of Commissioners and staff have spent reading the reams of information presented, debating said information in many public meetings, work sessions and hearings.

Most recently, a committee was formed to determine setback adjustments between a residence and industrial wind turbine. Setback adjustments were discussed by that committee with four members of the Planning Commission and stakeholders representing the wind development community, property owners with wind leases or wind turbines, proponents of the 2-mile setback and neighboring property owners.

Their results were then presented to the UCPC at a hearing July 19, 2012, and their recommendation is now before you. Blue Mountain Alliance believes the process was followed properly with all stakeholders participating in it. We urge you to approve the direction indicated by the Planning Commission for the 2-mile setback adjustment as written.

Sincerely,


Richard Jolly, President
Blue Mountain Alliance


Debbie J. Kelley, Secretary

00118

August 13, 2012

Umatilla County Board of Commissioners
% Tamara Mabbott
216 SE 4th St.
Pendleton, OR 97801

Dear Umatilla County Commissioners,

I appreciate the opportunity to recently serve as a member of the sub-committee for the work session held May 4, 2012 to develop suggested language for the 2-mile setback. I found our meeting to be a positive one.

There were ultimately two items in the July 19th meeting with the Planning Commission that were elaborated on; 1.) The need to further define rural residence as a point of clarification 2.) Omit ambiguous statement of 'in good faith' and replace it with something with more tangible qualities.

Unfortunately, I am unable to attend your upcoming Aug. 18th meeting. However, I wanted to voice my support for Mr. Robinson's recommendation, as detailed in his Memo dated August 8th suggesting the adoption of the language proposed in 'Option 4'. It closes loopholes, adds structure, and establishes specific criteria in areas where our group's original draft did not address such items.

Please feel free to contact me to discuss any question or concerns you may have.

Thank you for your consideration.

Dana Perkins
80283 Sand Hollow Rd.
Adams, OR 97810
541-379-2130
danap@wici.net

August 8, 2012

TO: Tamra Mabbott

FROM: Michael C. Robinson

CC: Doug Olsen

RE: **Amendment to Umatilla County Development Code Section 152.616
Establishing Standards for Adjustments to the Two-Mile Setback from
Wind Turbine Towers to Rural Residences (the "Text Amendment")**

Please find enclosed proposed findings for the Board of County Commissioners (the "Board") to consider at its public hearing on the Text Amendment on August 16, 2012. I have revised the findings to reflect the Planning Commission's recommendation to the Board and have also recommended an alternative Text Amendment to the Board. If the Board, after hearing argument and evidence, wants to tentatively adopt a different Text Amendment from that recommended by the Planning Commission, the Board should direct that staff return with revised findings that reflect the Board's tentative decision.

1. MAJOR ISSUES FOR DISCUSSION.

A. Which rural residences should be subject to the two-mile setback and the adjustment process?

The first issue that the Board may want to discuss is the Planning Commission's recommended language defining Rural Residence as a "legal, single-family dwelling existing (or for which an application has been submitted) 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 (remainder omitted)." The Planning Commission received substantial testimony about the need for a "bright line" to determine if a rural residence is subject to the two-mile setback and, thus, whether a wind power applicant must apply for an adjustment if the standard cannot be met.

The Committee appointed by the Board recommended to the Planning Commission following its May 4, 2012 work session that a rural residence include a residence not in existence but for which only an application had been made "in good faith." The Planning Commission's recommendation to the Board deleted the words "in good faith," so the Text Amendment before the Board now provides only that an application must have been made for a rural residence not yet in existence (in addition to existing residences).

As you told the Planning Commission, an application for a rural residence does not usually show the location of the rural residence. Only upon the issuance of a zoning permit is the precise location of a rural residence known.

The Planning Commission's recommended language (or even the language proposed by the Committee) would not provide an applicant with the location of the rural residence, so it would be very difficult to either meet the two-mile standard or apply for an adjustment. The benefit of having the phrase "in good faith" as a requirement for a rural residence application is that it would allow the applicant to argue that an application was not made in good faith. Nevertheless, as staff explained to the Planning Commission, neither the Committee recommendation nor the Planning Commission recommendation provided a "bright line" for the applicant, the property owner, the Planning Department or the decision maker.

The Board has four (4) options for determining when a rural residence is subject to the two-mile setback and the adjustment process:

- **Option 1** - The Committee's recommended language which includes existing rural residences and proposed rural residences not yet in existence for which an application has been submitted, including the requirement that the application have been submitted "in good faith," on the date a wind power application is submitted.
- **Option 2** - The Planning Commission's recommended language, which is the same as the Committee's recommendation, except without the phrase "in good faith".
- **Option 3** - To include existing rural residences but not include proposed rural residences for which only an application has been submitted on the date a wind power application is submitted.
- **Option 4** - 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.

B. What should the standard for existing rural residences be?

The second issue which the Board may want to discuss is which existing rural residences are subject to the two-mile setback. One view is that all rural residences should be subject to the standard regardless of habitability. The proponents of this view argue that if a residence is in existence, it should be subject to the setback.

Another view is that rural residences should be subject to the two-mile setback only if they are habitable. The proponents of this view argue that habitability is reasonable because the purpose of the setback is to protect residents. If a residence is uninhabitable, the purpose of the regulation is not met.

If habitability is the test, then the replacement dwelling standards in Umatilla County Development Code ("UCDC") 152.058(F)(1)(4) (**Exhibit 1**) could govern habitability. Other standards could govern habitability but using an existing UCDC provision (based on an Oregon Administrative Rule, OAR 660-330(8)(a)(A)-(D) (**Exhibit 2**) and an Oregon Revised Statute,

ORS 215.283(1)(p)(A)-(D) (**Exhibit 3**) brings certainty, consistency and ease of administration to the regulation.

The applicant would have the burden to determine which rural residences meet this standard. Only those residences meeting this standard on the date a wind power application is submitted would be subject to the two-mile setback and the adjustment process.

2. OTHER ISSUES.

A. No Improper Delegation.

The Board can find that the proposed adjustment language does not delegate the decision making on an adjustment application to third parties. As explained in the proposed findings, LUBA faulted the County for allowing rural residence owners to determine whether to waive the setback. The Text Amendment before the Board does not include that flaw. The proposed language clearly requires that an adjustment application be made to the County and that the adjustment be decided by County decision makers, not by rural residence owners.

B. Date of Rural Residence Existence or Application.

ORS 215.418(3) provides that standards and criteria in effect on the date an application is submitted govern the application. The rural residences subject to the two-mile setback must be subject to identification and a date on which their status is determined is one way to do so. The date of application submittal is the appropriate date to use because it is the date governing applicable standards.

C. "Legal" Dwelling.

The recommended language requires that a rural residence subject to the two-mile standard be "legal". The word "legal" will require that an applicant show that either the rural residence has been constructed before permits were required or that all permits have been obtained. Imposing a "legal" standard may make it difficult to prove the legality of a dwelling. This standard may be a burden for the applicant, may make it uncertain for a property owner to know if a rural residence is subject to the setback and may make the ordinance more difficult to administer.

D. Replacement Dwelling Standards.

If the Board includes these standards, the legislative history should show that the standards in UCDC 152.058(F)(1)-(4) must be present in a rural residence to make it subject to the two-mile setback and adjustment process. This UCDC provision is not an independent set of approval criteria nor must a replacement dwelling permit have been issued for a rural residence in order for it to be subject to the two-mile standard.

3. RECOMMENDATION.

Based on the testimony to the Committee and the Planning Commission, **OPTION 4** is the best option for the Board to adopt because it is the easiest for staff to administer, the easiest for the applicant and property owners to understand and includes both an existing rural residence which meets the replacement dwelling standards in UCDC 152.058(F)(1)-(4) and a rural residence not yet in existence but for which a zoning permit has been issued on the date a wind power application has been submitted.

This recommendation:

- Includes existing rural residences but limits those subject to the two-mile setback standard and the adjustment process to those which are habitable (the test for habitability is the replacement dwelling standards).
- Includes proposed rural residences for which a zoning permit has been issued because this provides a specific location for the rural residence and shows some intent to construct a rural residence.

If the Board adopts **OPTION 4**, the Text Amendment could provide:

"For purposes of this section, "rural residence" is defined as a legal, existing single family dwelling 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, on the date a wind power application is submitted."

MCR/cfr
Enclosures

separators and other customary production equipment for an individual well adjacent to the wellhead.

(C) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(D) A winery, as described in ORS 215.452.

(E) Farm stands if:

(1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25% of the total sales of the farm stand; and

(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops or livestock, and does not include structures for banquets, public gatherings or public entertainment.

(F) Alteration, restoration or replacement of a lawfully established dwelling that:

(1) Has intact exterior walls and roof structures;

(2) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(3) Has interior wiring for interior lights;

(4) Has a heating system; and

(5) In the case of replacement, the dwelling to be replaced is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;

(6) A replacement dwelling may be located on any part of the same lot or parcel so long as it complies, where practicable, with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling.

(7) If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, then the applicant shall, as a condition of approval, execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on the EFU portion of the lot or parcel. A release from the deed restriction may occur if the statute regarding replacement dwellings changes or if there is a change in the Plan and Zone designation. The county Planning Department shall maintain a copy of the deed restriction or release statement filed under this section.

(8) If the applicant has requested a deferred replacement permit, the dwelling is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the

(8)(a) A lawfully established dwelling is a single-family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

EXHIBIT 2

(p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

EXHIBIT 3

DRAFT
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, July 19, 2012
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

COMMISSIONERS

PRESENT: Randy Randall, Clinton Reeder, Gary Rhinhart, John Standley, David Lee, Tammie Williams, Frank Kaminski

ABSENT: David Lynde, Don Wysocki

STAFF: Tamra Mabbott, Richard Jennings, Gina Miller

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

CALL TO ORDER:

Chairman Randall called the meeting to order at 6:30 p.m. He read the opening statement, and called for abstentions or ex-parte contact.

NEW HEARING:

REQUEST FOR A PUBLIC HEARING was submitted by NORM KRALMAN of a CONDITIONAL USE PERMIT, #C-1200-12 application submitted by WALLA WALLA VALLEY ACADEMY. The Request for a Public Hearing was submitted during the 21-day comment period for the Conditional Use Permit. The Conditional Use Permit request is to establish a Church Camp which will replace the existing Church Camp (lodge, cabin) located on an adjacent property. The new facility will have a main lodge (capacity 75 persons), 2 cabins (capacity 28 persons each), a caretaker dwelling, parking (cars and buses), an amphitheater 11 RV sites, tent camping sites and a ball field. The new facility will be used by the Seventh Day Adventist Church. The criteria of approval for the Conditional Use Permit to establish a Church Camp are found in Section 152.172 (A), Section 152.615 and Section 152.616 (L).

Chairman Randall advised the Planning Commission that he would conduct the hearing but that he would recuse himself from the vote. His children attended school at Walla Walla Valley Academy.

(Insert minutes from this hearing)

NEW HEARING:

Update of Umatilla County Development Code, #T-12-046.
Amendment to Conditional Use Section 152.616 (HHH) of the Umatilla County Development Code and establishing standards for an adjustment to the two (2) mile setback between wind turbine tower and rural residences. Applicant is Umatilla County. Applicable Criteria are found in UCDC Section 152.750-152.755 Amendments. **The Planning Commission will make a recommendation to the Board of Commissioners, who will hold a public hearing on Thursday, August 16, 2012 at 1:30 p.m., in the Umatilla County Justice Center, 4700 NW Pioneer Place, Pendleton, OR 97801.**

Chairman Randall explained that the Planning Commission will be voting to make a recommendation to the Board of Commissioners. The Board will consider this application at a public hearing on August 16, 2012. He read the opening statement, and called for abstentions or ex-parte contact.

Staff Report: Mrs. Mabbott presented the staff report and introduced Land Use Attorney, Mike Robinson, who has been assisting staff with this process. She read from a memo dated July 15, 2012 that contained draft findings of fact that will enable the Board to make the final adoption of these siting standards. She explained that this was pursuant to a Land Use Board of Appeals (LUBA) remand from the first set of siting standards that the county approved for commercial wind energy facilities. Mrs. Mabbott stated that Board Order 2012-020 remanded back to the Planning Commission this one specific piece to adopt standards for deviating from the two mile setback. She commented that both LUBA and the Board of Commissioners have affirmed the two mile setback, and the hearing tonight was to address one small part of Section 152.616 (HHH), to clarify the standard and process to the two-mile setback between a wind turbine and a rural residence. Mrs. Mabbott also referred to an April 6, 2012 memo to the May 4, 2012 subcommittee that met to try and reach a consensus between representatives of the wind industry, neighbors to wind projects, members of city government, and members of the Planning Commission. The last part of the packet was the section containing the actual proposed language. Mrs. Mabbott read through the specific language that would be considered at this hearing. She reminded the Planning Commission that the Board previously had adopted language recommended by the Planning Commission, including language that would allow a property owner to be closer than two miles from a wind turbine. LUBA remanded this back to the county, stating that the county could not defer this decision to a third party, such as a municipality, city government or land owner. LUBA did state that the county could adopt language with specific standards as an alternative. Mrs. Mabbott advised that the subcommittee that met on May 4, 2012 had reached a successful consensus on what this language could be, and that was the language before the Planning Commission at this hearing. She did state that one of the parties

involved in the subcommittee had one small change they wanted to suggest for clarification. That party was present at the hearing and would be making a proposal.

Mike Robinson introduced himself and stated that he was representing Umatilla County in this matter. He advised that this was a legislative proceeding and an opportunity for the Planning Commission to listen to testimony and then vote to recommend the proposed language to the Board of Commissioners. The Planning Commission would also have to adopt the findings, if that was their decision.

Commissioner Standley asked what if a wind project was built and then 5 years later, an adjacent landowner decided to build a home that would put it only at a one mile setback. Chairman Randall explained that once the wind farm was built, that established the setbacks. Mrs. Mabbott clarified that the setbacks would be based on the time when an application was filed. Any homes built after the application for a wind project was filed would not be considered under this standard. Commissioner Reeder added that is why the language, "in good faith", was included in the draft proposal for a dwelling. Mr. Robinson clarified that the subcommittee included language based on the definition of a rural residence. He said that Element Power had some suggested changes for this draft language. Mrs. Mabbott explained that if a wind developer were to submit an application for a commercial wind energy facility, they would also submit an application for an adjustment to the two mile setback for the rural residences that are in place at that time, or for an application to build a single family dwelling that had been submitted in good faith. This change to the setback will be called an adjustment to the standard, not a variance.

Commissioner Standley asked about the state noise standards. Mrs. Mabbott advised that the noise standards are not up for consideration at this hearing. Discussion followed on the state noise standards. Commissioner Reeder stated that a land owner can sign a noise easement and waive these standards if they choose to. Mrs. Mabbott stated that the proposed setback language from the county is apart from and in addition to the state noise standards. Commissioner Reeder stated that the state noise standards still trump other setbacks, unless the land owner signs a noise easement. Discussion followed on the decibel levels as defined in the state noise standards.

Mr. Robinson commented that one of the criteria's discussed at the May 4th work session was how to determine if the adjustment would not significantly detract from the livability of a rural residence. He stated that the proposed language did indicate that it satisfies the applicable Department of Environmental (DEQ) noise standards. He concluded that livability is not detracted from if the applicable DEQ noise standards are met. Mr. Robinson said that the applicant for the adjustment has the burden of proof to demonstrate that noise standards have been satisfied. Applicants should have noise studies performed to submit with an application for an adjustment.

Commissioner Reeder asked how the Energy Facility Siting Council (EFSC) will respond to the adjustment suggestion. He commented that it was unclear still how EFSC will handle the two mile setback if the two miles is beyond the noise limitations. If the state

noise standards indicated a 1.5 mile setback, and the county has the 2 mile setback, was EFSC bound to abide by the 2 mile setback. He stated that if the project was being sited by EFSC, then the 2 mile setback standard would be irrelevant. Commissioner Reeder asked to verify that the rural residence definition assumed that if the land owner signed a contract with a developer, it would constitute a waiver and the residence would no longer be considered a "rural residence". Furthermore, signing a contract with a developer makes the land owner a participant with the wind project. Mrs. Mabbott clarified that LUBA determined that the county could not require a waiver from a resident. Commissioner Reeder commented that the definition of "rural residences" does not include residences within the project boundaries, and that the 2 mile setback does not apply to those residences. Discussion followed on how the setbacks would apply to different situations.

Mr. Robinson explained the definition of the "rural residences" from the proposed language of the adjustment section, and suggested that the term "waiver" not be used in this instance. He stated there is nothing being "waived". For the purposes of this section, rural residences in the application are not subject to the 2 mile setback standard. Mr. Robinson said that the reason LUBA remanded the ordinance back the last time was because the Board purported to delegate to private property owners the ability to make a decision on the adjustment. LUBA stated that the county could avoid delegation issues by providing for a variance process for the county to determine a lesser setback based on code variance standards, and this was the proposed language being considered at this hearing.

Commissioner Reeder stated that he hoped that everyone present would understand that if a property owner signed a contract with a wind developer, they would give up their right to the 2 mile setback protection. He commented that the setback standards gave the property owner the ability to negotiate with the developer. Discussion followed on negotiations between land owners and developers, and the different types of contracts that could potentially be signed between these parties. Commissioner Reeder noted that signing a waiver did not make a land owner a part of the project. He expressed concern for home owners who are on their own to negotiate with wind developers. He stated that if land owners understand the protection that was provided under this proposed language, then this process would work.

Public Testimony: Sara Parsons, Iberdrola Renewables. Ms. Parsons stated that her company was still very concerned that the 2 mile setback standard will deter wind development in Umatilla County, impacting economic development for the county. Their company does appreciate the time spent by the Board, Planning Commission and the public on this process. They support the adjustment language, but are confused by the "good faith" language. Ms. Parsons said that they have reviewed the suggested changes from Element Power and they would support these changes. Their main concern about the "good faith" language was that it presents an opportunity for land owners to buy property near a proposed wind project for the purposes of extorting funds from the developers, or to thwart the project entirely. They want more rigorous or objective

standards for showing that the property owner really wanted to build a home on the subject property.

Public Testimony: Nicole Hughes, Element Power. Ms. Hughes distributed a handout to members of the Planning Commission. Upon reviewing the proposed draft language from the May 4th work session, she developed some revisions to clarify some areas of concern. She stated that she did not believe that these suggestions would alter the intended spirit of the changes discussed at the May 4th work session. Ms. Hughes said that she found some existing language in the current code under the replacement dwelling section (UCDC 152.058 (F) 1-5) that would clarify what was meant by a rural residence. She read aloud their proposed changes to the draft language for the Planning Commission. Ms. Hughes stated that their other main concern was finding a process for a land owner to secure their right to develop a rural residence and have the setback criteria applied to that proposed development. She said it was agreed at the May 4th work session that the setback would be applied based on a preliminary land use decision application being filed. Ms. Hughes spoke about concerns that the developers had with this standard. She stated that this would allow for some "gaming" of the system. A person could submit an application and cause the developer additional expense or potentially even kill a project. The developers want to know exactly what they need to design the setbacks to when they are submitting an application for a project, and who they need to get a waiver from. Ms. Hughes suggested that this be tied to a time in the land use review process where some administrative review of an application has taken place. This would enable the developers to know two critical things; where the dwelling will be located and does it meet the definition of a rural residence. The developers would like to see this determination be tied to a preliminary land use decision being issued. Ms. Hughes confirmed that the preliminary land use decision was good for 4 years, and then they would have to get a building permit at some point. She said if someone were to submit an application the day before they submit their application, they would have no way of knowing of this potential residence. She commented that this revision would also take the burden off of the county to determine whether or not a "good faith" effort was made by the applicant for a rural residence. Even though she advocated for the "good faith" provision during the May 4th work session, it was a slippery slope and may lead to confusion and appeals from both sides. This can be remedied by tying it to a specific date in the review process, such as a preliminary land use decision being issued.

Commissioner Rhinhart stated that he was not willing to remove the "good faith" language, as he was not aware of any "gaming" being conducted in this county. He recommended that there be flexibility built in, because there are many people not aware of pending projects. He suggested that if wind developers wanted certainty to design the projects, they should announce a potential project two years ahead of an application to give land owners time to submit for development permits. Ms. Hughes replied that she was not trying to move the date out a great deal. She is just asking for some time for the county to review the application so they know where they have to implement setbacks. She stated that Mrs. Mabbott told her that this would take approximately six weeks from when the application was submitted. Commissioner Rhinhart stated that they were

trying to protect the landowners, and want to maintain some flexibility in the process. Ms. Hughes asked for some direction so developers know what they will be establishing setbacks from. Commissioner Rhinhart suggested putting a notice in the paper prior to submitting their application so that property owners had an opportunity to advise the developers or the county of any pending development on their properties.

Commissioner Reeder pointed out that many properties are multi-generational, or passed down from family member to family member. Some generations don't necessarily know where or when someone else in their family will want to build a home. Ms. Hughes said that all they want was for the county to have six weeks to review the application. Commissioner Rhinhart replied that the wind developers work on a project for several years before submitting an application, and this should be plenty of time for them. Discussion followed on multi-generational families and their properties. Commissioner Reeder stated that developers trigger things when they come to town, and he doesn't want to stop the "good faith" prospect for multi-generational land owners. Ms. Hughes stated they just want to know how the administrative process will be handled.

Mr. Robinson commented that this was discussed at the May 4th work session on whether to go with an application date or an approval date, and it was decided then to include the "good faith" language so there was some test to the application. If the wind project applicant believes that an application was made to "game" the system, they would have the ability to include facts in their application that it was not a "good faith" application to develop a rural residence. The planning director could then determine if an application was made to "game" the system and if it would be subject to the setback standards for a rural residence. Commissioner Lee commented that land owners are unable to submit an application to develop because they simply aren't aware of a wind project application being made. Mr. Robinson replied that this type of thing happens quite often. Ms. Hughes commented that their met towers have been there for 3 years, and that they are not being secretive. She agreed that they do keep the process of leasing land a secret, so that other developers do not get their land owners. If someone wanted to calculate out 2 miles from their met towers and decide to submit an application for a rural residence, then she would know where to plan her towers or who to approach for a waiver.

Commissioner Reeder asked to clarify the difference between placement of a new home and a replacement dwelling. Ms. Hughes replied that they are not defining these as two different types of dwellings; she was suggesting using the language found in the replacement dwelling section to define a rural residence for this adjustment section language. Commissioner Standley asked if they could use the tax assessor's records to establish what a dwelling was. Mr. Robinson replied that the assessor records often do not match the land use zoning definitions and should not be used for this purpose.

Mr. Robinson asked Ms. Hughes to clarify her earlier statement of only using #1-4 and not #5 of the replacement dwelling criteria, and she replied that #5 did not apply to this situation. He suggested the language, "containing the elements of #1-4" of the replacement dwelling section (UCDC 152.058). Ms. Hughes replied that she agreed with this suggestion. Commissioner Reeder asked for clarification on the difference

between applying for a new dwelling and applying for a replacement dwelling. Mr. Robinson explained that there are two different tests; one for an existing structure and the proposed "good faith" language for a new dwelling. He further explained that what Ms. Hughes was asking for is a more clearly defined timeframe on the new dwelling application process that is pushed out a little further than it is currently. Ms. Hughes agreed and described how she would go about contacting the Planning Department while she was designing a project to find out if there were any pending applications in the area. Since it was very expensive to design a project, this would end up being an on-going process including regular contact with the Planning Department.

Commissioner Williams asked Mr. Robinson to restate what he had said earlier about taking away property rights. He replied that there had been discussion at the May 4th work session on whether to base a decision for a dwelling on the application date or the preliminary approval date. He explained that the work session participants had come to the consensus of using the application date with the qualifying language of "a good faith application". When a developer submits an application and feels that someone is "gaming the system", they can submit an argument that it was not a "good faith" application for a dwelling and therefore the developer does not have to apply the setback standards. The "good faith" language was designed to allow Planning staff to segregate the applications that truly have been made in good faith from property owners that have been planning their structure for some time as opposed to those that are submitting an application with a bad motive.

Ms. Hughes asked how the developers were supposed to determine if there was an application made that was not "in good faith". She stated that they would have to determine if the application was valid and complete, and has all required information been submitted. This would appear to be the same process that the county must go through to make a preliminary land use decision, and no one could determine this until they had the opportunity to review the application. This was why they were suggesting that the standard be moved to the preliminary land use decision stage, instead of the application date. Commissioner Reeder asked Ms. Hughes about some hypothetical situations that could arise from the multi-generational farms in the county and discussion followed.

Mr. Robinson stated that the suggested language did not require that the dwelling be built. The language just says "good faith application" and could also just say "application". The "good faith" language was suggested by the May 4th work session. The Planning Commission could also decide to go with the proposed language from the developers that states that the decision was based on an approval for a land use decision. The choice before them at this hearing was whether to choose the "good faith application" language proposed from the work session on May 4th or to incorporate the additional changes proposed by the developers including a land use decision approval instead of an application date.

Public Testimony: Elaine Albrich, Stoel Rives. Ms. Albrich stated that they support the proposed language changes made by Element Power. They do not wish to

undermine the work accomplished at the work session that was productive, but it was a very long day. She believes that they have a better resolution, and supports Mr. Robinson's suggestion of using the elements of the replacement dwelling to define a rural residence. She also encouraged the Planning Commission to consider the time period where there is an actual land use decision made.

Public Testimony: Richard Jolly, 54462 Upper Dry Creek Road, Weston, Oregon. Mr. Jolly stated that some land owners feel that the wind developers have already "gamed the system"; and have not acted in good faith. He feels that the residents of this county have already lost many protections. He stated that there were many people at the May 4th work session that felt that the "good faith" language should not have been included, but the developers requested it to be in the proposed language. The developers now want to change other definitions of what constitutes a dwelling. Mr. Jolly would like to see the dwelling definition remain as originally proposed, and the "good faith" language removed. They support the application date as the line, the same as it is for a wind developer. Discussion followed on what constitutes a dwelling. Chairman Randall asked Mr. Jolly to summarize his comments, and Mr. Jolly replied that he supports removing the "good faith" language and keep the application date as the line. Commissioner Reeder asked to clarify that any rural residence applications that are submitted prior to a wind energy facility project application will be subject to the 2 mile setback standard, and Mr. Jolly agreed that is what he supported.

Mrs. Mabbott clarified that there was not a huge difference in timeframe between an application being submitted to when a preliminary land use decision was made. This process typically takes 6-8 weeks.

Public Testimony: Steve Corey, PO Box 218, Pendleton, Oregon. Mr. Corey stated that he was representing Cunningham Sheep Company as a board member for this hearing. As a tax paying land owner in the county, they have voiced concerns in the past over the 2 mile setback standards. It is public record that they have a project and where their land is located. He participated in the May 4th work session, and has concerns about the issues raised by Element Power and what to do about adjacent land owners where there was no dwelling. Mr. Corey asked how they could determine what a "good faith" application was, and what constitutes a structure eligible for a replacement dwelling. He stated that they do not favor the 2 mile setback, and feel that the EFSC standards are sufficient. He asked to re-submit a letter that he distributed at the May 4th work session into the record. Mr. Corey stated that he was concerned that this will be delegating to third parties again the decision what is going to happen with land. He stated that this language was back in the trap of not being legal. He said that if the work session could have had more time, they could have come up with a better solution. Mr. Corey stated that the language proposed by Element Power was not strong enough. He asked who was going to make the determination of what is or is not "good faith", and then what happens after that determination. Mr. Corey suggested that in addition to submitting an application for a rural residence, the applicant must also get their Zoning Permit approved. The Zoning Permit requires a site plan that pins down where future development will be, so the developers would know where they could place their

turbines. Mr. Corey distributed his letter from the May 4th work session and a wind buffer map to the Planning Commission for the record. Mr. Robinson advised the Planning Commission that they had copies of all the documents submitted by Mr. Corey, and these will be part of the record going before the Board.

Public Agency Testimony: None offered.

Rebuttal Testimony: Mr. Robinson stated that the only thing he heard during testimony that concerned him was a point brought up by Mr. Corey regarding the requirement of a site plan with a Zoning Permit application. Mrs. Mabbott confirmed that a site plan was not a part of the initial land use decision application process, and that a Zoning Permit was the only application needed for a replacement dwelling application. He stated that since a Zoning Permit is administered in all cases and shows the exact location of the proposed dwelling, he would recommend using the Zoning Permit as the standard for the 2 mile setback. Based on the testimony at this hearing, using the Zoning Permit would provide an exact location and a timeline for both the county and the developer applicant. Mrs. Mabbott commented that if a prospective land owner submitted an application for a dwelling they would need to know where they intended to build, especially if it was a large, say 600 acre, parcel. Commissioner Rhinhart stated that there are always obvious areas on a parcel where a dwelling was more suited to be built, due to geography or utility access. He doesn't feel that it would be that difficult for a person to decide where they want to build a home on a parcel. Mrs. Mabbott explained the land use decision process versus the Zoning Permit process, and what types of dwellings fell under each category. With a land use decision approval, the applicant/land owner has four years to apply for the Zoning Permit. A replacement dwelling only requires a Zoning Permit, and the replacement dwelling can go any place on the parcel. Mr. Robinson reminded the Planning Commission that the goal of the May 4th work session was to try and keep the language simple, and suggested the language, "or for which a Zoning Permit has been issued". This would satisfy the desire to make rural residences, both new and existing/replacement, subject to the 2 mile setback standard. He stated that this was a nice line, and there would be reasons to recommend this to the Board.

Commissioner Reeder asked about changing the location of the dwelling for the Zoning Permit, and Mrs. Mabbott explained that they would have to modify their Zoning Permit site plan to do this. Commissioner Reeder said that this still didn't solve Mr. Corey's problem, as he could build his home right on the property line and hold up the project. Mr. Robinson agreed, as long as he was meeting the setback standard or applies for an adjustment. Commissioner Reeder said that it didn't help with the timeline issue, but Chairman Randall said it solved the issue of "gaming the system". Mrs. Mabbott explained that if a Zoning Permit were issued to a property owner, followed by a wind energy project application being submitted, and the property owner changed the site plan later, the amended site plan would not be subject to the 2 mile setback standards. The original Zoning Permit site plan would be the only one to affect the wind project application.

Commissioner Williams asked about the other permits from Department of Environmental Quality (DEQ) and the State Building Code Division (BCD) building permit. Mrs. Mabbott explained the process in order of approval with land use always coming first before the other state agencies. Planning staff determines if the development requires a land use decision or just a Zoning Permit and then signs off on the other permit applications once land use approval is given. Commissioner Williams stated that she does understand the tidiness of using the Zoning Permit as the benchmark for the timing of the application, but she does not want to see the land owners give up any more than they already have to. She does not want to further restrict land owners or take away any options. Commissioner Randall said that the land owner could submit an application for \$500 to protect their rights. Mrs. Mabbott clarified that Commissioner Williams wanted to give more deference to the land owners who would have to qualify for a farm dwelling for farm purposes with a very high bar, as opposed to an industrial development on farm ground. Commissioner Williams wants to protect farm use, including a farm dwelling on farm ground. Commissioner Randall stated that he understood and agreed with what Commissioner Williams was saying, but that he liked clean and tidy.

Mrs. Mabbott asked Ms. Hughes about the size of their proposed project, and Ms. Hughes replied that it would be anywhere from 130 megawatts to 350 megawatts. Mrs. Mabbott stated that they would be under the jurisdiction of EFSC standards, not the county where 105 megawatts was the threshold. Mrs. Mabbott suggested that a project being sited by EFSC would file a Notice of Intent (NOI) and this process takes 6 months or longer. The NOI requires a public notice and this would give land owners time to consider filing their own application for development before the wind project application was filed. Commissioner Williams asked who was notified by the NOI, and Mrs. Mabbott responded that all land owners within 500 feet of the proposed project area would be notified. There was a loophole in the current application because land owners within 2 miles are not noticed. Ms. Parsons stated that a NOI was not required for every project sited by EFSC, and it was dependent on the megawatt threshold. Mrs. Mabbott confirmed that indeed not all EFSC jurisdiction projects file a NOI, for example Ms. Parsons project, aka Iberdrola's "Helix" project, was processed under the "expedited review" and therefore there was not an NOI submitted.

Commissioner Reeder stated that he was not against wind power, but he was against wind power developers abusing their neighbors. He hoped that this process would provide a mitigation process for affected land owners. EFSC setback standards provide no protection against property value loss, and he could demonstrate how this has already happened in this county. He has spent his life working with conflict resolution between public agencies, and he wants the developers to understand the hostility from the local community against them. Commissioner Reeder asked the developers to give affected land owners a legitimate right to be a victim. The land owners who receive windfalls from the wind projects as unearned income for tax purposes gain while the affected neighbors experience an undeserved burden and loss of property values.

Mrs. Mabbott suggested that someone put a motion on the table for the purposes of discussion, so they know what language they wanted to consider. Mr. Robinson suggested that the motion maker specify what language they wanted to change, and that the findings be amended if they change any language from the proposed draft.

Commissioner Standley asked about the work session held on May 4th, and wanted to know if there was a vote taken or a general consensus reached on the draft language being proposed. Mr. Corey replied that there was no vote taken, and it was his perception that there was not a general consensus from the group. Chairman Randall stated that he chaired that work session and he disagreed with Mr. Corey. He felt that a consensus had been achieved at that work session. He stated that he challenged the wind developers to come back to the table with language that would work for them, and after a brief break, the current draft language was suggested by one of the participating developers.

Chairman Randall closed the hearing and moved to deliberation.

Commissioner Standley asked if anyone had ever considered the scope of land owners that could potentially submit an application for a rural residence and if this would really be a huge issue. Chairman Randall said that he understood Mr. Corey's statement that the 2 mile setback would limit wind power development in this county, and that he was willing to accept that. There was a real concern that tipped over hunting shacks could cause some issues for developers. Commissioner Standley commented that the Planning Commission was being asked to trade off land owner potential property rights to make it easier for wind developers. Discussion followed on how different structures are taxed differently and that the tax role cannot be used for land use decisions. Commissioner Standley asked for clarification on what their options were for this hearing. Commissioner Reeder discussed that all parties wanted certainty, and that was not possible. He felt that a consensus was reached at the work session, but the discussion was a long ways from being over and there are still issues to be resolved. Discussion followed on how the 2 mile setback was working. Commissioner Reeder suggested taking out the "good faith" language, and insert a definitive date to determine who submitted their application first to administer the 2 mile setback.

Mr. Robinson suggested that someone make a motion with proposed language to give the Planning Commission something focused to deliberate. He went on to say that after hearing testimony this evening, it was his opinion that the application date did not give enough certainty to either side. By adding the language "Zoning Permit has been issued", it would provide a bright line with a site plan and certainty on both sides. Commissioner Reeder suggested accepting the proposed language with the following changes; removing the "good faith" language and inserting "Zoning Permit has been issued". Mr. Robinson said that if the Zoning Permit language was used, the "good faith" language was no longer required as the Zoning Permit gave a specific date and location to the land owner and the wind developer. Commissioner Reeder stated that the Zoning Permit language minimizes the "gaming issue" that concerns the developers. Commissioner Williams asked if this meeting could be continued to talk more about this matter, as she was not

comfortable with the revisions. Mr. Robinson advised that Commissioner Williams could make a motion to continue the hearing, or to approve the recommend the language before the Planning Commission as it stands. Discussion followed on how to proceed. Commissioner Williams believed that the proposed language was part of an agreement from all parties, and then she found out that there are two different sides. She was worried about taking more away from the land owners. Chairman Randall said that the Planning Commission was not the final word; it would be decided by the Board. He stated that if they didn't move forward with recommending this to the Board, then they would not protect land owners at all.

Commissioner Williams moved to accept the proposed language as is, with no changes, to be recommended to the Board of Commissioners, and to accept the findings that support this language. Commissioner Rhinhart seconded the motion.

Mrs. Mabbott advised that if this motion failed, they could make a different motion and vote on that. She clarified the motion that was before them. Chairman Randall asked about making this recommendation to the Board. Mrs. Mabbott confirmed that this was a significant policy decision and that the minutes of this hearing would be forwarded to the Board for their review. Commissioner Lee asked if the Zoning Permit language was included, and Mrs. Mabbott stated that this was not part of the motion on the table. She clarified that the motion on the table was the language found in their packets and the findings supporting the proposed language. Commissioner Standley called for the question. Commissioner Reeder asked if he could amend the motion. Mr. Robinson advised that once the question, a privileged motion, has been called, the motion maker could not accept friendly amendments. The motion must be voted on as it was stated.

Reeder: NO
Rhinhart: YES
Williams: YES
Standley: NO
Lee: NO
Kaminski: YES
Randall: NO
Motion failed 4-3.

Commissioner Reeder moved to accept the language as proposed but delete the language "in good faith". Mr. Robinson asked to clarify his motion by stating that the motion would adopt everything and amend the parenthetical to read, "for which an application has been submitted." Commissioner Reeder agreed that was correct. Mrs. Mabbott asked if Commissioner Reeder wanted to include the language suggested for a replacement dwelling. He replied no, as it was not in the original proposed language. Mrs. Mabbott commented that the replacement dwelling language would help bring clarity to the matter. Commissioner Reeder stated that the "good faith" language has been the focus of considerable discussion, and no one trusted the language in practice. The Planning Commission voted no on the original proposed language which included the "good faith" language, so that was why he was moving to delete that language in this

new motion. He would be open to another motion following that. Mr. Robinson clarified that the language in front of the Planning Commission was not in the motion just made by Commissioner Reeder. He stated that the current motion in front of them now was the proposed language from the packet with the deletion of three words, "in good faith". Commissioner Lee asked about the Zoning Permit language, and Mrs. Mabbott advised that this was not included in the current motion. Chairman Randall commented that if someone were to submit an application, they would have 4 years to tie up the land developer because there was no Zoning Permit issued. Mr. Robinson suggested to Chairman Randall that he might want to ask for a second to the motion that had been made by Commissioner Reeder. Commissioner Reeder confirmed that he had made a motion that was identical to Commissioner William's first motion, except deleting "in good faith". He stated that he was open to another motion following this, pass or fail, which would further amend the language. He wanted to delete the most problematic language and see if they get a yes or no. Commissioner Standley seconded the motion. Commissioner Reeder stated that they could come back and reference language about the replacement dwellings. Mrs. Mabbott suggested it would be better to do this in one motion. Commissioner Williams stated that it was too late because the motion had been made and seconded. Commissioner Reeder stated that the more complicated that a motion was, the more apt it would be for someone to like one piece of it and not like another piece. All he is trying to do is get the "good faith" language removed. Mrs. Mabbott asked Commissioner Reeder if he was not making a motion on what to forward to the Board, but looking for a straw poll as to whether or not to include the "in good faith" language. Mr. Robinson stated that he thought he had heard a motion for the Planning Commission to vote to adopt the language presented in the packet, with three words "in good faith" absent and make that recommendation to the Board. Commissioner Reeder stated that was what he had moved. Commissioner Standley stated that was the motion that he seconded. Chairman Randall called for the question.

Reeder: YES
Rhinhart: NO
Williams: YES
Standley: YES
Lee: YES
Kaminski: YES
Randall: NO
Motion passed 5-2.

Commissioner Reeder stated that the "good faith" language had been dealt with, and the next question was there anything else they want to do to modify the language in order to move it forward to the Board. Mr. Robinson stated that they had just voted to make a recommendation to the Board. Commissioner Reeder stated that he did not necessarily need that to end the process. Mrs. Mabbott stated that was why she had asked if his intent was to make a final motion or take a straw poll on those three words, and Commissioner Reeder chose to make a motion. He stated that he can live with that.

Chairman Randall adjourned the meeting at 10:21 pm.

Respectfully submitted,

Gina Miller
Secretary

CUNNINGHAM SHEEP & LAND COMPANY
PENDLETON RANCHES, INC.
MUD SPRINGS RANCHES
HOKE RANCHES



CUNNINGHAM SHEEP COMPANY

303 S.E. 3RD STREET

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541-276-6391

PENDLETON, OREGON 97801

May 4, 2012

Via Hand Delivery

Tamra Mabbott
Planning Director
Umatilla County Dept of Resource Services
216 SE 4th Street
Pendleton, OR 97801
United States of America

RE: Cunningham Sheep Company comments on proposed wind ordinance setback proposal/
Request for Notice of Decision

Dear Ms. Mabbott:

This letter is written on behalf of Cunningham Sheep Company (Cunningham), an entity with Wind Energy Leases covering its property. Cunningham is adversely affected by the county's 2 mile rural residence setback provisions and the proposed limited provisions for relief from those setbacks. Cunningham's leases, executed before the county's adoption of the rural residence setbacks and in reliance on the previous county regulatory regime, provide for wind energy facilities that in whole or part appear to be within the 2 mile rural residence setback area. Cunningham requests notice of all hearings on the above described matter as well as a copy of the county's final decision(s) concerning wind energy setbacks, including those for rural residences, and provision for relief from those setbacks. ORS 197.615.

Please accept this letter into the record of the county proceedings, including the planning commission proceeding scheduled for May 4, 2012, regarding reestablishment of a process for removal of the requirement of a 2 mile setback for rural residences.

Cunningham submits the attached redline with suggestions regarding providing relief from the 2 mile setback requirements without waiving its right to object to these setbacks and the county provisions eventually adopted for relief from those setbacks. Please understand the attached redline is submitted without waiver of Cunningham's position that the county's requirement for a 2 mile setback from rural residences, as well as the other county wind energy setback provisions, are without a rational

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basis and lack scientific support. Moreover, the attached redline is submitted without waiver of Cunningham's position that the cumulative effect of the county's 2 mile rural residence setback together with the other county imposed wind setbacks, has a significant adverse impact on siting wind projects in the county. This is contrary to the county's comprehensive plan which requires the county to encourage renewable energy sources like wind. It is also contrary to the requirements of Goal 5 that require the county to treat wind energy proposals submitted to EFSC as "significant energy resources" and prioritize approving, not denying, such wind projects that state law deems "significant". The county's wind setbacks and the provisions for relief therefrom make no accommodation for projects that state law deems to be "significant" whether through submittal to EFSC or in a county process. See OAR 660-023-0190(1)(a), (b), OAR 660-023-0190(2).

Further, the county's wind energy setbacks, in particular the requirement for a 2 mile setback from rural residences, so dramatically adversely impacts wind projects in the county, that it is with all due respect preempted by state and federal law. Finally, the county's wind energy setback provisions including the required 2 mile setback from rural residences unconstitutionally abridges Cunningham's lease contracts in contravention of federal and state constitutional requirements.

With the above in mind, the following is the explanation for the attached redline.

Applicant for the Adjustment

It is important that the adjustment decision be made as a part of the wind energy facility county permit process. If a "rural residence owner" is allowed or required to separately apply for an adjustment, then this raises the very real risk of having two (appealable) inconsistent land use decisions. Which one would govern, who could tell? Moreover, such a process introduces complexity because a project opponent could claim to be a rural residence owner and claim entitlement to a setback and the right to run "adjustments", but not warrant any such rights. This means the issue of who constitutes a "rural residence owner" entitled to the protections of the county's ordinance can be either duplicately or separately litigated, bogging down the wind energy facility siting process. Further, requiring demonstration of compliance with the county setback requirements at the time the application is submitted is consistent with ORS 215.427(3), whereas the proposal as written by the county is not. ORS 215.427(3) requires that the standards applied to a permit application are those in effect at the time the application is submitted. Requiring or allowing a parallel process to be initiated by another person other than the applicant to change the standards that apply to the pending application, renders illusory the applicable standards for the underlying application, in contravention of ORS 215.427(3).

Definition of Rural Residences

Revising the definition of "rural residence" provides additional clarity. The suggested changes are consistent with the Umatilla County Development Code ("UCDC") in that the UCDC already uses the concepts of "lawfully established dwelling" and "permanent dwelling" in the EFU zone. In addition, requiring evidence of occupancy prevents the mischief of abandoned, inhabitable houses from being the subject of a residential setback. Finally, ensuring a "rural residence" is permanently placed, avoids the mischief of temporary "dwellings" being moved around opponents' property for the purpose of prohibiting wind energy facilities. Similarly, the point when the application is "submitted" rather than deemed "complete" is the proper point to trigger the rural residence requirement per the above described goal-post rule (ORS 215.427(3)). Thus locking in the rural residence setback at the time an application is submitted is the only means to be consistent with the state goal posts requirements.

Make the Setback inapplicable to EFSC "Significant Energy Facilities"

State law is clear that wind energy projects submitted to EFSC must be treated as "significant energy resources." OAR 660-023-0190(1)(a). A "significant energy resource" is entitled to the benefit of protection – the county limiting "new conflicting uses within the impact area of the site and authorize the present or future development or use of the energy source at the site." OAR 660-023-0190(1)(b). The rural residence setback imposes requirements that limit or prohibit the significant energy resource not the conflicting use. As such the county requirements are the reverse of these state law requirements that demand significant energy resources be allowed and protected. Therefore, the county should be clear that, at a minimum, the rural residence setback does not apply to projects submitted to EFSC.

Livability

Livability is a highly subjective term that is a proxy for the type of standardless, opponent veto that LUBA rejected in *Cosner*. Instead of the term livability, the county should specify what it is protecting; which to date has been identified only as noise and aesthetics. The redline offers standards that give meaning to the county's stated concerns.

Goal 5 Resources

The proposed language is contrary to Goal 5 (OAR 660-023-0190). For projects submitted to the county for approval, there can be little doubt that the county is required to go through a Goal 5 process to determine whether the energy source is a significant energy resource subject to significant protection. Instead, the proposed language turns the Goal 5 requirements on their head by legislating a presumption that no wind energy resource would ever be considered a significant energy resource and relatedly foreclosing the balancing process Goal 5 contemplates for competing significant Goal 5 resources. The proposal simply, with all due respect, is one that unlawfully forecloses the possibility of ever protecting a wind energy resources. This provision should be removed in its entirety.

Ms. Tamra Mabbott

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Other Issues not in the Redline – Other Setbacks

The County apparently plans to retain the mandatory 2 mile setback from UGBs, the mandatory 1 mile setback from unincorporated rural communities and the mandatory setback from roads including county roads, with no ability to obtain relief from these provisions. Cunningham believes this is a mistake. The county should initiate a process for relief from these setback requirements as well. Relatedly, and at a minimum, the setback from county roads should be better defined to clarify that it applies only to existing, developed county roads that the county maintains as shown on some publically accessible document on the date the application is submitted.

Sincerely yours,



Steven H. Corey

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Suggested Umatilla County Language and Rationale

Allowing an adjustment to the rural residence setback standard gives landowners a choice for participating in wind energy generation projects. Participating landowners (*i.e.*, landowners having some contract or agreement with a developer) are likely advocates for the project and desire flexibility to locate turbines on their property, even in proximity to rural residences they own.

Nonparticipating landowners, ~~on the other hand, may or may not support wind energy generation, but that the County deems to be affected by a proposed project~~ should have the opportunity to negotiate with project developers to authorize a lesser rural residence setback ~~if so desired and if certain conditions are met. Building~~ Providing for a rural residence setback adjustment for property owners and developers into the wind energy generation permit process allows the necessary flexibility for property owners and developers alike, while ensuring that possible or perceived significant adverse impacts have been properly are considered.

Umatilla County recognizes the need for this balance. In responding to *Cosner v. Umatilla County*, Umatilla County has developed criteria for evaluating whether to grant a rural residence setback adjustment. With a few modifications, the proposed analysis can ~~work to promote safe, responsible~~ allow wind development in Umatilla County while providing balance to property owners and developers without significant controversy. These suggested modifications are reflected in the blackline below:

(1) From a turbine tower to a rural residence, two (2) miles, unless the ***applicant*** ~~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 lawfully established permanent*** ~~legal, conforming dwelling at a minimum having working indoor plumbing and a kitchen with working sink and stove, existing at a specific and defined point on the unit of land at the time an application for a wind facility is submitted deemed complete and having been occupied at such specific and defined point, full time as a primary dwelling during three of the last five years, which can be demonstrated by proof of continuous utility services that are consistent with full time permanent usage such as may be shown from monthly power bills from a utility company).~~ 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 at turbine tower and a rural residences are shown below:

A. If the wind energy project is submitted to Oregon Energy Facility Siting Council (EFSC) for approval, then no setback shall be required and instead the project shall be treated as a "significant energy resource" per the requirements of OAR 660-023-0190.

B. Proof of the rural residence owner consent to a lesser setback is included in the application record or.

CBA. The proposal will not significantly detract from the livability of add noise to the ambient conditions of the rural residence or significantly adversely affect key views from the rural residence, which can be demonstrated as applicable by showing compliance with the Oregon Department of Environmental Quality noise regulations; and or by showing that

GD. The turbine tower and blades are not visible from the rural residence, and

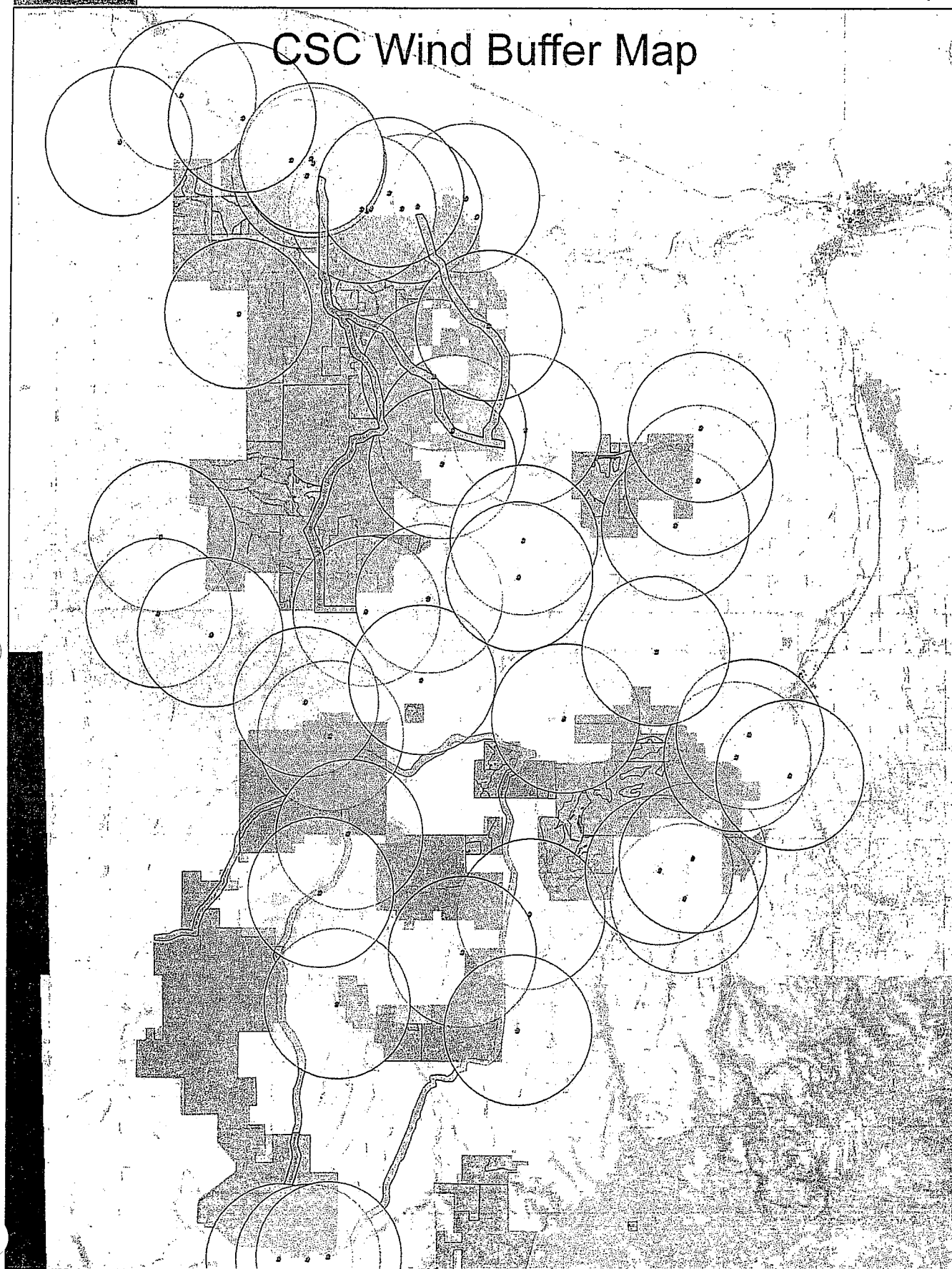
~~CB. Any impacts to the livability of the rural residence resulting from the adjustment are mitigated to the extent practical; and~~

~~DC. 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~~

ED.CD. All other requirements of the wind facility application remain satisfied.

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

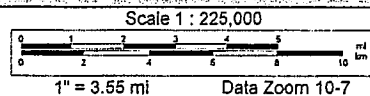
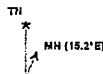
CSC Wind Buffer Map



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elementpower

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Umatilla County Planning Commission
C/O Tamra Mabbott
216 SE 4th Street
Pendleton, OR 97801

July 16, 2012

Umatilla County Planning Commission,

Element Power appreciates the open, transparent process the County undertook to draft revised language to the zoning ordinance regarding the Wind Turbine Set-Back Waiver. Element wishes to make additional suggestions to help clarify the proposed language. In particular, the two areas of the draft ordinance we feel additional clarification is needed is the definition of a single family dwelling, and the timing on when pending single family dwelling structures require a set-back waiver. Enclosed you will find a suggested red-line version of the draft ordinance language. Element Power will be present at the July 19, 2012 Planning Commission Hearing and is eager to discuss these suggested revisions.

Sincerely,

Nicole Hughes
Senior Project Manager

CC:

Michael C. Robinson, Perkins Coie, LLP
1120 N.W. Couch Street, Tenth Floor
Portland, Oregon 97209-4128

PROPOSED WIND TURBINE SETBACK ADJUSTMENT CRITERIA

Results of May 4, 2012 Work Session – Suggested Revisions for July 19th PC Hearing

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 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} **SINGLE FAMILY** Dwelling satisfying the replacement dwelling test in UCDC 152.058(F)(1)-(5) existing **(OR FOR WHICH** a preliminary land use decision has been issued **AN APPLICATION HAS BEEN SUBMITTED IN GOOD FAITH)** on a unit of land at the time an Wind Power Generation Facility application is **SUBMITTED. -deemed complete AND LOCATED ON LAND NOT A PART OF THE WIND POWER GENERATION FACILITY. FOR PURPOSES OF THIS SECTION, THE SETBACK DOES NOT APPLY TO RURAL 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.

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

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

(1) Expansion of the established Wind Power Generation Facility boundaries;

(2) Increase the number of towers;

(3) Increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to the re-powering or upgrading of power generation capacity; or

(4) Changes to project private roads or access points to be established at or inside the project boundaries.

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

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 the following: 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.

(Ord. 83-4, passed 5-9-83; Ord. 2002-02, passed 5-20-03; Ord. 2005-02, passed 1-5-05; Ord. 2009-09, passed 12-8-09; Ord. 2011-02, passed 3-17-11; Ord. 2011-05, passed 6-28-11; Ord. 2011-06, passed 6-28-11; Ord. 2011-07, passed 6-28-11; Ord. 2012-04, passed 2-28-12; Ord. 2012-05, passed 2-28-12)

(11) *Walla Walla Watershed.*

- ☒ **DLCD Notice of Proposed Amendment or**
☐ **Periodic Review work Task Proposed Hearing or**
☐ **Urban Growth Boundary or Urban Reserve Area**

THIS COMPLETED FORM, including the text of the amendment and any supplemental information, **must be submitted to DLCD's Salem office at least 35 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING** ORS 197.610, OAR 660-018-0020 and OAR 660-025-0080

Jurisdiction: **Umatilla County**

Date of First Evidentiary Hearing: **06/28/2012**

Local File Number: **T-12-046**

Date of Final Hearing: **08/16/2012**

Is this a **REVISION** to a previously submitted proposal? ☐ No ☒ Yes Original submittal date: **09/14/2010**

☐ Comprehensive Plan Text Amendment(s)

☐ Comprehensive Plan Map Amendment(s)

☒ Land Use Regulation Amendment(s)

☐ Zoning Map Amendment(s)

☐ Transportation System Plan Amendment(s)

☐ Urban Growth Boundary Amendment(s)

☐ Periodic Review Work Task Number _____

☐ Urban Reserve Area Amendment(s)

☐ Other (please describe):

Briefly Summarize Proposal in plain language IN THIS SPACE (maximum 500 characters):

Amending Section 152.616(HHH) of the Umatilla County Development 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.

Has sufficient information been included to advise DLCD of the effect of proposal?

☒ Yes, text is included

Are Map changes included: minimum 8½"x11" color maps of Current and Proposed designations.

☐ Yes, Maps included

Plan map change from:

To:

Zone map change from:

To:

Location of property (Site address and TRS):

Previous density range:

New density range:

Acres involved:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Is an exception to a statewide planning goal proposed? ☐ YES ☒ NO Goal(s):

Affected state or federal agencies, local governments or special districts (It is jurisdiction's responsibility to notify these agencies.

Department of Land Conservation & Development, Oregon Office of Energy, Energy Facility Siting Council

Local Contact person (name and title): **Tamra Mabbott, Planning Director**

Phone: **541-278-6246**

Extension:

Address: **216 SE Fourth Street**

City: **Pendleton**

Zip: **97801-**

Number: **541-278-5480**

E-mail Address: **tamra@co.umatilla.or.us**

- FOR DLCD internal use only -

DLCD File No _____

00177

SUBMITTAL INSTRUCTIONS

This form must be submitted to DLCD at least 35 days prior to the first evidentiary hearing.
per ORS 197.610, OAR Chapter 660, Division 18 and OAR Chapter 660, Division 25

1. This Form 1 must be submitted by a local jurisdiction. Individuals and organizations may not submit a comprehensive plan amendment for review or acknowledgment.
2. When submitting a plan amendment proposal, please print a completed copy of **Form 1** on light green paper if available.
3. **Text:** Submittal of a proposed amendment to the text of a comprehensive plan or land use regulation must **include the text** of the amendment and any other information necessary to advise DLCD of the effect of the proposal. "Text" means the specific language proposed to be amended, added to or deleted from the currently acknowledged plan or land use regulation. A general description of the proposal is not adequate. **Please submit Form 1 with ALL supporting documentation.**
4. **Maps:** Submittal of a proposed map amendment must also include a map of the affected area showing existing and proposed plan and zone designations. The map must be legible, in color if applicable and printed on paper no smaller than 8½ x 11 inches. Please provide the specific location of property: include the site address (es) and Township/Range/Section/tax lot number. Include text regarding background, justification for the change, and the application if there was one accepted by the local government.
5. **Exceptions:** Submittal of proposed amendments that involve a goal exception must include the proposed language of the exception.
6. Unless exempt by ORS 197.610(2), proposed amendments must be submitted to DLCD's Salem office at least 35 days before the first evidentiary hearing on the proposal. The 35 days begins the day of the postmark, or, if submitted by means other than US Postal Service, on the day DLCD receives the proposal in the Salem Office. The first evidentiary hearing is typically the first public hearing held by the jurisdiction's planning commission on the proposal.
7. Submit **one paper copy** of the proposed amendment including the text of the amendment and any supplemental information and maps (for maps see # 4 above).
8. Please mail the proposed 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 x11 green paper 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.

BEFORE THE PLANNING COMMISSION FOR UMATILLA COUNTY

In the Matter of an Initiation of a Text Amendment by the Umatilla County Board of Commissioners to Amend Umatilla County Development Code ("UCDC") Section 152.616 Establishing Standards for an Adjustment to the Two (2) Mile Setback from Wind Turbine Towers to a Rural Residence

FINDINGS OF FACT AND CONCLUSIONS OF LAW RECOMMENDING APPROVAL OF A LEGISLATIVE TEXT AMENDMENT TO THE BOARD OF COUNTY COMMISSIONERS

1. Introduction

This Umatilla County Planning Commission (the "Planning Commission") has considered and approved the amendment to UCDC 152.616 establishing standards for an adjustment to the two (2) mile setback between wind turbine towers and rural residences. The Board previously adopted UCDC section 152.616 establishing the 2-mile setback between wind turbine towers and rural residences and provided that the setback could be waived by the consent of the rural residence's 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 the 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 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 BCC2012-020 (February 28, 2012), initiated an amendment to the text of the UCDC to add standards for an adjustment to the setback and directed that the Planning Commission consider the 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."

The Planning Commission finds that based on Board Order BCC2012-020, a document that was physically before the Planning Commission at its public hearing on June 28, 2012, and is, therefore, part of the record in these proceedings, that the Board properly initiated this text amendment pursuant to UCDC section 152.750. The Planning Commission, therefore, has the authority to consider the text amendment. Further, the Planning Commission finds that the initiation pursuant to UCDC Section 157.750 allows the Planning Commission to recommend different language for adoption to the Board than that initiated because nothing in either the UCC or the Board order prohibits the Planning Commission from doing so.

2. Procedural Matters

A. Categorization of this Matter

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

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") 35 days prior to the initial evidentiary hearing. Thirty-five days prior to the 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.

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 notice published in the *East Oregonian* newspaper on [insert date].

The Planning Commission 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. 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 hearing is legislative, the Planning Commission 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 inapplicable to this legislative proceeding.

3. Description of Amendment

The Board considered and initiated an amendment to the text of the UCDC to provide for standards for an adjustment to the 2 mile setback requirement as explained above. An adjustment is not a variance. An adjustment is a modification of the standards, subject only to the approval criteria considered in this matter. The proposed adjustment language before the Planning Commission is as follows:

A. Amendment to Definition of Rural Residence.

This language provides:

"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

The proposed adjustment criteria are as follows:

"(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 recommends that subsection (4)(a), second sentence, be revised to read as follows: "This standard is satisfied if then applicable Oregon Department of Environmental Quality (DEQ) noise standards are satisfied, there is no significant adverse impact to property access and traffic conditions . . ." (remainder of sentence unchanged). The Planning Commission makes this change to the proposed language so that it is clear that the applicable DEQ standards are those in effect when an adjustment application is submitted.

4. 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 ("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 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 19 Goals. The Planning Commission finds that 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 Planning Commission 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 Planning Commission 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 Planning Commission finds as follows on each requirement of Goal 2. First, the Planning Commission 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 Planning Commission 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 2 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 2 mile setback may be reduced. The Planning Commission finds that an adjustment process for the 2 mile setback is warranted because otherwise the 2 mile setback might be inappropriate in certain instances.

The Planning Commission finds that Goal 2 is satisfied.

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

Finding: The Planning Commission 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 Planning Commission 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 Planning Commission finds that this Goal is satisfied.

B. Applicable Oregon Administrative Rules

The Planning Commission 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 Planning Commission takes notice of LUBA's recent 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 Planning Commission 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 Planning Commission finds that mitigation under OAR 660-012-0060(2) is not required.

C. Applicable Plan Policies

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

The Planning Commission can find 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 Planning Commission finds, as explained above, that the publication of notice of the Planning Commission hearing in a newspaper of county-wide circulation fulfills this requirement.

The Planning Commission finds that this policy is satisfied.

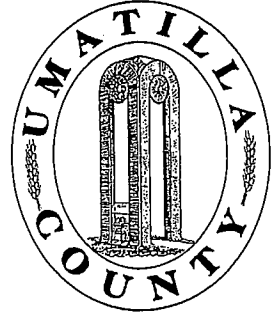
5. Conclusion

For the reasons explained in these findings, the Planning Commission finds that the applicable approval criteria for this text amendment have been satisfied.

Umatilla County

Department of Land Use Planning

Website: www.umatillacounty.net/planning • Email: planning@umatillacounty.net



Director
Tamra Mabbott

LAND USE
PLANNING,
ZONING AND
PERMITTING

April 6, 2012

CODE
ENFORCEMENT

MEMO

SOLID WASTE
COMMITTEE

TO: Interested Persons

SMOKE
MANAGEMENT

FROM: Tamra Mabbott

GIS AND MAPPING

CC: County Planning Commission

RURAL ADDRESSING

Board of Commissioners

County Counsel

RE: Work Session on adjustment Standards for the setback requirement for wind turbines and dwellings

I. Background/Status

Umatilla County adopted amendments to UCDO 152.616(HHH) standards for commercial wind power generation facilities in June 2011. Ordinance 2011-06 established a two (2) mile setback from any rural residence unless the landowner recorded a written waiver for a reduced setback. Ordinance 2011-06 was appealed to the Land Use Board of Appeals (LUBA). The County Board of Commissioners held hearings to address the LUBA Remand and on February 28, 2012 adopted Order BCC 2012-020, which included remanding the matter of the setback waiver to the Umatilla County Planning Commission. The Board directed staff to proceed expeditiously. Four members of the County Planning Commission have agreed to host a work session with stakeholders. The stakeholders invited to participate in the work session are listed below. The work session will be held on May 4, 2012 at the Justice Center Media Room. The meeting will begin at 9:00 and end no later than 4:00 pm.

II. Purpose of Work Session

The purpose of the Work Session is to develop a consensus on the variance standards for the 2-mile setback.

III. LUBA Decision

The Oregon Land Use Board of Appeals ("LUBA") reviewed Ordinance 2011-06 requiring standards for a two (2) mile setback from any rural residence unless the landowner recorded a written waiver for a reduced setback. LUBA remanded Ordinance 2011-06 to the County because it found the ordinance impermissibly delegated authority to a private landowner to waive the County's two-mile setback and substitute for it a lesser setback determined solely at the unrestrained discretion of the landowner. LUBA noted in footnote 3 at page 8 of the Opinion: "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. Whether such variance standards can permissibly include due consideration whether neighboring cities or landowners have consented to the requested variance is less clear to us."

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.

Additionally, LUBA analyzed whether Ordinance 2011-06 would be consistent with Statewide Planning Goal ("Goal") 5. LUBA decided that if due to a setback waiver (in the case of Ordinance 2011-06) a wind facility would be sited in a location under the County's acknowledged land use regulations and plan required consistency with adopted Goal 5 resources, then the County would presumably conduct that analysis as part of the permit proceeding. A provision in the proposed language addresses this issue.

IV. Proposed Adjustment Criteria.

With Order No. BCC2012-020, the Board of Commissioner recommended the Planning Commission adopt the following standards. These standards were developed in consultation with Land Use Attorney Michael Robinson.

"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 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."

V. Attachments

Board of Commissioners Order No. BCC2012-020

VI. Protocol

The work session has been set for May 4th. If you would like to submit materials for the subcommittee consideration before May 4th, please send or email me the materials and I will be sure to circulate to the entire subcommittee.

Planning Commission Chairman Randy Randall will be chairing the work session. He has provided the following message for work session committee members and observers:

"The Planning Commission understands that this topic is controversial and endears a lot of emotion. Each member of the subcommittee has valued insight and information to share. It is important that everyone treat each other with RESPECT. Sharing ideas and speaking by all members of the subcommittee is essential to a successful outcome. Speaking will only be allowed when recognized by the Chairman. Disrespectful persons will be asked to leave the meeting. Members of the public (persons other than committee members listed below) are free to attend the work session and listen. Members of the public may be granted an opportunity to speak only at the discretion of the Chairman if time allows."

VII. Work Session Committee Members

Planning Commission Members

Randy Randall, Chair

Gary Rhinhart

Frank Kaminski

Clinton Reeder

Representatives of the Wind Development Community

Jeffrey Durocher, Iberdrola Renewables

Nicole Hughes, Element Power

Property Owners with leases and/or wind turbines

Kirk Terjeson, Helix Farmer

Steve Corey, Cunningham Sheep Company

Dana Perkins, Athena Farm Family

Property owner (invited)

Proponents of the 2-miles Setback/Neighboring Property Owners

Ed Chestnut, Milton Freewater City Council

Cindy Severe, Horse Trainer and adjacent property owner

Dave Price, Blue Mountain Alliance and adjacent property owner

Charlie Gillis, Attorney, Union Co. Resident

SETBACK STANDARDS SUBCOMMITTEE

13-Apr-12

NAME

Planning Commission Members

Randy Randall

Gary Rhinhart

Frank Kaminski

Clinton Reeder

Representatives of the Wind Development Community

Jeffrey Durocher, Iberdrola Renewables

Nicole Hughes, Element Power

Property Owners with leases and/or wind turbines

Kirk Terjeson, Helix farmer

Cunningham Sheep - Steve Corey

Dana Perkins, Adams farmer

Raymond & Sons - Tyson Raymond
invited landowner

Proponents of the 2-mile setback/adjacent landowners

Ed Chestnut, M-F City Council

Cindy Severe, property owner

Dave Price, Blue Mountain Alliance

Charlie Gillis, Attorney, Union Co.

Staff

Doug Olsen, County Counsel

Tamra Mabbott, Planning Director

Mike Robinson, Land Use Attorney

RECEIVED

FEB 28 2012

UMATILLA COUNTY
RECORDS

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Initiating)
Amendment to Wind Power) Order No. BCC2012-020
Generation Facility Siting)
Standards Allowing for)
Adjustment Criteria for Rural)
Residence Setbacks)

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

WHEREAS the Board of Commissioners on June 28, 2011, adopted Ordinance No. 2011-06, amending the wind power generation facility siting requirements, including a 2 mile setback from a turbine tower to a rural residence;

WHEREAS the county would like to provide for an adjustment process for the 2 mile rural residence setback.

NOW THEREFORE, the Board of Commissioners orders that:

1. Pursuant to Umatilla County Code of Ordinance Section 152.750, the Board of Commissioners is initiating a proposed amendment to Section 152.616 for Commercial Wind Power Generation Facility siting requirements.

2. The following is proposed to be added to Section 152.616 under the setbacks standards from a turbine tower to a rural residence:

The rural residence landowner may apply for and receive an adjustment for a reduced distance between a turbine tower and a rural residence under the following approval criteria:

- 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

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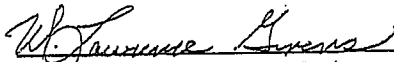
- C. If an adjustment affects a Goal 5 resource, the wind facility application must consider the effect of the adjustment on the Goal 5 resource; and
D. All other requirements of the wind facility application remain satisfied.

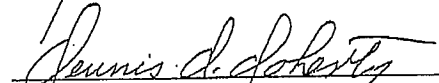
An adjustment under this section shall be processed as part of the wind facility application.

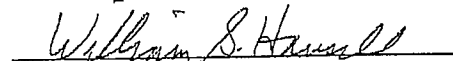
3. This matter is remanded to the Umatilla County Planning Commission pursuant to Section 152.752, to conduct a hearing on the proposed amendment and to forward its recommendation on the amendment to the Board of Commissioners for final action.

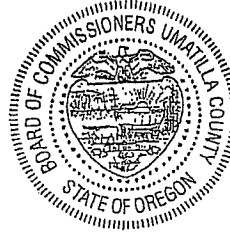
DATED this 28th day of February, 2012.

UMATILLA COUNTY BOARD OF COMMISSIONERS

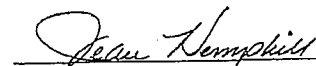

W. Lawrence Givens, Chair

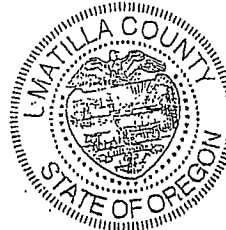

Dennis D. Doherty, Commissioner


William S. Hansell, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS


Jean Hemphill
Records Officer



CERTIFICATE OF SERVICE

Iberdrola Renewables, LLC, Petitioner
Umatilla County, Respondent (LUBA No. 2012-082)

Jim Hatley, Petitioner
Umatilla County, Respondent (LUBA No. 2012-083)

I hereby certify that on Wednesday, October 31, 2012, I served a true and correct copy of the record of the above case:

- By USPS Mail to the Land Use Board of Appeals,
550 Capitol St. NE, Suite 235, Salem, OR 97301-2552;
- By USPS Mail to Bruce W. White, Attorney at Law,
(representing Jim Hatley), P.O. Box 1298, Bend, OR 97709;
- By USPS Mail to Elaine Albrich, Attorney at Law,
(representing Iberdrola Renewables, LLC,) Stoel Rives, LLP,
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204-1268;
- By Electronic Mail to Michael C. Robinson, Attorney at Law,
Perkins Coie, 1120 NW Couch Street, Tenth Floor,
Portland, OR 97209-4128
- By personal delivery to Doug Olsen, Umatilla County Counsel,
216 SE 4th Street, Pendleton, OR 97801

DATED: October 31, 2012

SIGNATURE: Connie Hendrickson
Connie Hendrickson, Administrative Assistant
Umatilla County Planning Department