



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

05/04/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Umatilla County Plan Amendment
DLCD File Number 003-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, May 17, 2012

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Carol Johnson, Umatilla County
Jon Jinings, DLCD Community Services Specialist

<paa> YA



FORM 2

DLCD

Notice of Adoption

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

In person electronic mailed

DATE
STAMP

DEPT OF
APR 30 2012
LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Umatilla County**

Local file number: **#T-10-139**

Date of Adoption: **2/28/2012**

Date Mailed: **4/23/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 9-14-10

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".

Two ordinances changing the County's land use regulations and implementing the LUBA remand (Cosner v. Umatilla County). Ordinance No. 2012-04 deleted unconstitutional language and Ordinance No. 2012-05 removed amendment to Goal 5 program within watershed.

Does the Adoption differ from proposal? Please select one

Yes

Plan Map Changed from: **n/a**

to:

Zone Map Changed from: **n/a**

to:

Location: **county**

Acres Involved:

Specify Density: Previous: **n/a**

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 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 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 type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 003-10 (18523) [17021]

DLCD file No. _____

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

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

RECEIVED

FEB 28 2012 THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY
RECORDS

STATE OF OREGON

In the Matter of Amending)
Development Code for Wind) ORDINANCE NO. 2012-04
Power Generation Facility)
for Deletion of Setback)
Waiver Provisions as Required)
by LUBA Decision)

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 Planning Commission and Planning Department staff have drafted updates to the siting standards for wind power generation facilities;

WHEREAS the Umatilla County Planning Commission held work sessions and discussions on the matter a number of times, including December 17, 2009, and January 13, 2011, and held a public hearing regarding the proposed amendments on November 18, 2010 and February 24, 2011, and forwarded the proposed amendment to the Board of Commissioners with a recommendation for adoption;

WHEREAS the Board of Commissioners held a public hearing on March 17, 2011, continued to May 12, 2011, June 14, 2011 and June 28, 2011, to consider the proposed amendments, and voted 3-0 to adopt Ordinance No. 2011-05, and 2 in favor and 1 against to adopt Ordinance No. 2011-06;

WHEREAS Ordinance Nos. 2011-05 and 2011-06 were appealed to the Land Use Board of Appeals, under LUBA Nos. 2011-070, 2011-071, and 2011-072;

WHEREAS the Land Use Board of Appeals issued a decision on January 12, 2012, finding, *inter alia*, that the waiver of the setback requirements impermissibly delegated authority, and that the waiver provisions in Ordinance Nos. 2011-05 and 2011-06 were unconstitutional;

WHEREAS the Board of Commissioners held a public hearing on February 28, 2012, to consider the issues remanded to Umatilla County by the Land Use Board of Appeals, and to implement the decision.

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, to comply with the decision of the Land Use Board of Appeals (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:

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; ~~unless a city council action authorizes a lesser setback.~~ 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; ~~unless the landowner of the land zoned UC authorizes by written waiver a lesser setback and the waiver is recorded with the county deed records.~~

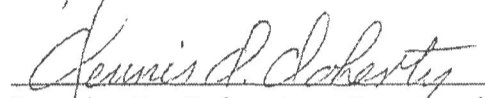
(3) From a turbine tower to a rural residence shall be 2 miles; ~~unless the landowner of the rural residence authorizes by written waiver of a lesser setback and the waiver is recorded with the county deed records.~~ For purposes of this section, a "rural residence" is defined as a legal, conforming dwelling existing on the parcel at the time an application is deemed complete. The measurement of the setback is from the centerline of the turbine tower to the centerpoint of the residence.

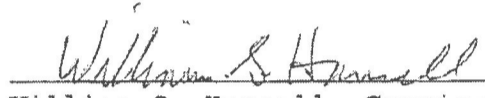
FURTHER by unanimous vote of those present, the Board of Commissioners deems this Ordinance necessary for the immediate preservation of public peace, health, and safety; therefore, it is adjudged and decreed that an emergency does exist in the case of this Ordinance and it shall be in full force and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

DATED this 28th day of February, 2012.

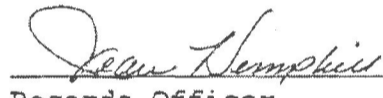
UMATILLA COUNTY BOARD OF COMMISSIONERS


W. Lawrence Givens, Chair


Dennis D. Doherty, Commissioner


William S. Hansell, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS


Records Officer



RECEIVED

FEB 28 2012

UMATILLA COUNTY
RECORDS

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Amending)
Development Code for Wind) ORDINANCE NO. 2012-05
Power Generation Facility) INCLUDING FINDINGS
Walla Walla Watershed)
Standards)
)

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 Planning Commission and Planning Department staff have drafted updates to the siting standards for wind power generation facilities;

WHEREAS the Umatilla County Planning Commission held work sessions and discussions on the matter a number of times, including December 17, 2009, and January 13, 2011, and held a public hearing regarding the proposed amendments on November 18, 2010 and February 24, 2011, and forwarded the proposed amendment to the Board of Commissioners with a recommendation for adoption;

WHEREAS the Board of Commissioners held a public hearing on March 17, 2011, continued to May 12, 2011, June 14, 2011 and June 28, 2011, to consider the proposed amendments, and voted 3-0 to adopt Ordinance No. 2011-07 for standards within the Walla Walla Watershed;

WHEREAS Ordinance No. 2011-07 was appealed to the Land Use Board of Appeals, under LUBA Nos. 2011-070, 2011-071, and 2011-072;

WHEREAS the Land Use Board of Appeals issued a decision on January 12, 2012, finding, *inter alia*, that the county decision did not include a Goal 5 ESEE analysis or findings explaining the additional standard limitations for the area;

WHEREAS the Board of Commissioners held a public hearing on February 28, 2012, to consider the issues remanded to Umatilla County by the Land Use Board of Appeals, and to implement the decision;

WHEREAS the additional standards for the watershed area will also provide protection of treaty rights of the Confederated Tribes of the Umatilla Indian Reservation.

NOW, THEREFORE the Board of Commissioners of Umatilla County finds, and adopts these findings to support Ordinance No. 2012-05:

1. The Land Use Board of Appeals ("LUBA") remanded Ordinance 2011-07 because the ordinance "[adjusted] the balance the county initially struck in its initial ESEE analysis and its program to achieve the goal". Slip op. 16. Ordinance 2011-07 amended Umatilla County Development Code ("UCDC") 152.616(HHH) (11) ("Section 11") by adding subsections (B) and (D) which included additional Goal 5 protections and thus "adjusted the balance" of the Goal 5 program. LUBA found that the adjustment required the County to address at least some of the ESEE analysis set out in OAR 660-023-0040(2) through (5) (the administrative rule implementing Goal 5). Because the County did not conduct the ESEE analysis nor adopt any findings based on an ESEE analysis, LUBA remanded the County's decision in order for the County to conduct the ESEE analysis and adopt findings.

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

3. The County is not required to readopt Section 11 in its entirety on remand.

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

5. The County finds that with the adoption of amended Section (11) consistent with the existing and acknowledged Goal 5 program, it has appropriately addressed this sub-assignment of error on remand.

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, to comply with the decision of the Land Use Board of Appeals (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.

(11) Walla Walla Watershed.

Lands located within the Walla Walla Sub-basin East of Highway 11 shall be subject to additional standards. The purpose of these criteria is to prevent impacts to the following: ~~inventoried Goal 5 resources~~; highly erodible soils (as defined by the Oregon Department of Agriculture), and ~~federally listed threatened and endangered species, and the Critical Winter Range~~. 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, wind turbines, transmission lines, and roads, will not conflict with existing significant Goal 5 Resources within the Walla Walla Sub-basin.~~

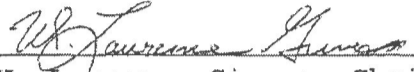
~~(C) The application shall demonstrate that the Wind Power Generation Facility and its components will be setback a minimum of two miles from streams and tributaries that contain Federally listed threatened and endangered species, and, that the project will generate no runoff or siltation into the streams.~~

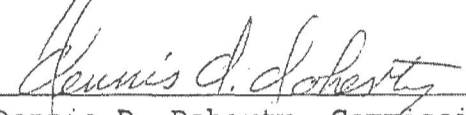
~~(D) The application shall demonstrate that the Wind Power Generation Facility and its components will not be located within the Critical Winter Range.~~

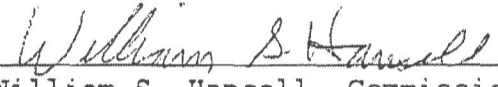
FURTHER by unanimous vote of those present, the Board of Commissioners deems this Ordinance necessary for the immediate preservation of public peace, health, and safety; therefore, it is adjudged and decreed that an emergency does exist in the case of this Ordinance and it shall be in full force and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

DATED this 28th day of February, 2012.

UMATILLA COUNTY BOARD OF COMMISSIONERS

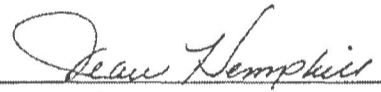

W. Lawrence Givens, Chair


Dennis D. Doherty, Commissioner


William S. Hansell, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS


Records Officer



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DEPT OF
APR 30 2012
LAND CONSERVATION
AND DEVELOPMENT



Umatilla County
Department of
Land Use Planning
216 SE 4th Street
Pendleton, OR 97801

Attn: Plan Amendment Specialist

**Dept of Land Conservation
and Development**
635 Capitol Street NE, Ste 150
Salem, OR 97301-2540