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UMATILLA COUNTY RECORDS

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Adoption of )  
 Additional Findings on Remand ) Order No. BCC2012-021  
 in Support of Ordinance Nos. )  
 2011-05, 2011-06 and 2011-07 )  
 for Wind Power Generation )  
 Facilities Siting Requirements )

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 Nos. 2011-05, -06 and -07, amending the wind power generation facility siting requirements;

WHEREAS Ordinance Nos. 2011-05, 2011-06 and 2011-07 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 county did not consider or find that the ordinances are consistent with five plan policies that mention energy resources;

WHEREAS this order shall constitute additional findings in support of the adoption of Ordinance Nos. 2011-05, 2011-06 and 2011-07.

NOW THEREFORE, the Board of Commissioners finds and orders that the following are additional findings in support of Ordinance Nos. 2011-05, 2011-06 and 2011-07:

1. Ordinances 2011-05, 2011-06 and 2011-07 and the 152.616(HHH) commercial wind siting standards adopted by Umatilla County are consistent with the Umatilla County Comprehensive Plan. State law and the Umatilla County Development Ordinance allow commercial wind energy facilities as a conditional use in the Exclusive Farm Use Zone. (ORS 215.283(1)) and UCDO 152.616(HHH)).

2. As a use allowed in ORS 215.283(2) state law does not

require or mandate that commercial wind energy facilities be permitted in the EFU Zone. If commercial wind energy facilities were mandated, they would be included in ORS 215.283(1) and permitted as a Land Use Decision in the county ordinance.

3. If the county did not support commercial wind energy development the county could choose to not allow them in its code and the use would be excluded from each zone. Umatilla County has adopted and implemented a land use code that specifically allows for commercial wind energy facilities and therefore the county supports the development of commercial wind energy facilities.

4. Land uses referenced in ORS 215.283(2), including "commercial utility facilities for the purpose of generating power for public use by sale," of which a commercial wind energy facility is one, are by definition "nonfarm uses" that a county may permit "subject to the approval of the governing body or its designee" and subject to ORS 215.296. ORS 215.283(2). ORS 215.296 provides that "an application for a use in ORS 215.283(2) may demonstrate that the standards for approval set forth . . . will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective." The purpose of the siting standards is in fact to ensure the county land use process provides clear and objective standards, further evidence that the county is in support of commercial wind energy facilities.

5. Umatilla County has permitted a number of commercial wind energy facilities since 1997. In 2003 Umatilla County adopted 152.616(HHH) standards for commercial wind energy facilities. Prior to that date, Umatilla County processed land use permits using more general standards, for a "utility facility for purpose of generating power for public use by sale." The 2003 Ordinance and the 2011 Ordinances were developed for the explicit purpose of providing clear and objective standards, to support and encourage commercial wind energy development. Absent specific standards, permitting of renewable energy development and commercial wind energy in particular would be more vague and challenging for a developer to show compliance and therefore obtain final land use approval.

6. The LUBA decision referenced only part of four Comprehensive Plan Policies. Where those Policies are part of Plan Findings and Policies, the complete text is printed below. When considered in context of the complete Plan Finding and Policy, and given the findings above, it is clear that the amended Section 152.616(HHH) is consistent with the Comprehensive Plan Findings and

Policies.

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

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

Policy 42.

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

RESPONSE: The County finds that these Comprehensive Plan Policies are satisfied for several reasons. The County allows for the siting of commercial wind energy facilities and other renewable energy facilities. The conditional use standards apply to all zones in which commercial energy projects are allowed. The standards contained in Section 152.616(HHH) are clear and objective and therefore make the process more attainable for a landowner and developer. The standards do not preclude the siting of facilities in the county. In addition to the siting standards the County has made information such as mapping and other literature available. Additionally, the County provides notice to affected agencies as part of the conditional use process, thereby further enhancing the review process. The County allows, but does not require, that a wind energy facility be included on the Goal 5 inventory, thus allowing development without a time-consuming and subjective legislative amendment, thus expediting the review process. There is unavailable and insufficient information on wind energy resources to complete any Goal 5 analysis on a countywide basis. For proprietary reasons, developers are unwilling to provide wind energy resource information, including quality and quantity of resource. The County will continue to proceed on a case-by-case basis to address energy resources.

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

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

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

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

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

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

C. Chapter 16. ENERGY CONSERVATION

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

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

RESPONSE: The County finds that the wind siting standards in Section 152.616(HHH) are consistent with this Policy where the clear and objective standards provide incentive and assurance for a developer seeking permits. The clear and objective standards provide regulatory assurance to a landowner, developer and for financing purposes. Clear and objective standards provide more assurance to a developer seeking to complete the permitting and development process than do vaguely written standards which are more susceptible to appeal. The standards may limit development in highly sensitive areas, but do not preclude the siting of facilities in the county.

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

D. Chapter 12. ECONOMY OF THE COUNTY

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

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

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

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

E. Chapter 12. ECONOMY OF THE COUNTY

Finding 7: Comparative advantages over neighboring jurisdictions exist in availability of labor, reasonably priced lands, access to energy sources, and excellent transportation systems.

Policy 7: Cooperate with development oriented entities in promoting advantageous aspects of the area.

RESPONSE: The County finds that by allowing commercial wind energy development as a conditional use in resource zones and by adopting clear and objective standards, the county is cooperating with developers of commercial wind energy and promoting the development of energy sources.

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

7. For all of the findings set out in this order, as well as contained in the original decisions and record, Ordinance Nos. 2011-05, 2011-06, and 2011-07 are found to be consistent with the Umatilla County Comprehensive Plan and its policies.

DATED this 28th day of February, 2012.

UMATILLA COUNTY BOARD OF COMMISSIONERS

*W. Lawrence Givens*

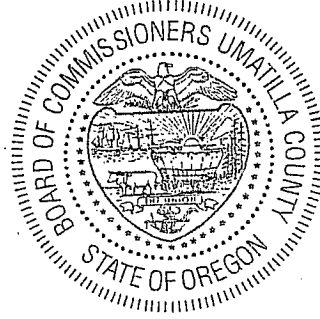
W. Lawrence Givens, Chair

*Dennis D. Doherty*

Dennis D. Doherty, Commissioner

*William S. Hansell*

William S. Hansell, Commissioner



ATTEST:  
OFFICE OF COUNTY RECORDS

*Jean Churchis*

Records Officer

