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UMATILLA COUNTY

RECORDS THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

*10:50 am*

STATE OF OREGON

In the Matter of Establishing            )  
 Wind Power Generation Facility        )   ORDINANCE NO. 2002-02  
 Siting Requirements                    )  
 and Amending the Umatilla             )  
 County Development Code                )

WHEREAS pursuant to Umatilla County Code of Ordinances §152.750, the Umatilla County Planning Commission initiated the establishment of requirements for the siting of a Wind Power Generation Facility; and

WHEREAS the establishment of the siting requirements requires a Umatilla County Development Code Text Amendment; and

WHEREAS the Umatilla County Planning Commission held workshops on the proposed amendment on August 23, 2001 and November 29, 2001 and June 13, 2002; and

WHEREAS on February 6, 2002, a notice including all information required by ORS 215.203, was sent to all property owners with property located in the Exclusive Farm Use Zone and Grazing/Farm Zone of Umatilla County; and

WHEREAS the first public hearing on the adoption of the amendments was held before the Umatilla County Planning Commission on February 28, 2002, continued to March 7, 2002, and on October 24, 2002, continued to November 14, 2002, December 19, 2002 and January 23, 2003; and

WHEREAS the Umatilla County Planning Commission recommended to the Board of Commissioners adoption of the amendments; and

WHEREAS on May 2, 2002, a public hearing was held by the Board of Commissioners to consider the adoption of the amendments, and the hearing was continued to May 9, 2002, July 1, 2002, September 3, 2002, October 31, 2002, December 5, 2002, February 20, 2003, April 1, 2003, April 15, 2003, May 13, 2003, and May 20, 2003.

WHEREAS Umatilla County intends to establish a local conditional use permitting process that is clear, timely, and

predictable, as well as encompasses important local issues such as the health, safety and welfare of citizens in Umatilla County.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Development Code is amended to include the sections set out on Exhibit 1 to this ordinance and incorporated into this ordinance by this reference.

DATED this 20th of May, 2003.

UMATILLA COUNTY BOARD OF COMMISSIONERS

William S. Hansell  
William S. Hansell, Chair

Dennis D. Doherty  
Dennis D. Doherty, Commissioner

Emile M. Holeman  
Emile M. Holeman, Commissioner



ATTEST:  
OFFICE OF COUNTY RECORDS

Jean Hemphill  
Records Officer

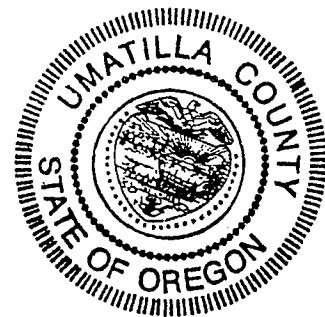


EXHIBIT 1

**WIND POWER GENERATION FACILITY  
SITING REQUIREMENTS**

**§ 152.003 DEFINITIONS**

**COMMERCIAL WIND POWER GENERATION.** An activity carried out for monetary gain using one or more wind turbine generators operated as a single Wind Power Generation Facility that has a combined generating capacity greater than 1 MW.

**DECOMMISSIONING FUND.** An adequate financial vehicle dedicated and maintained with appropriate adjustments to assure the money to dismantle the Wind Power Generation Facility and to restore the site to a useful, non-hazardous condition.

**WIND POWER GENERATION FACILITY.** An energy facility that consists of one or more wind turbines or other such devices and their related or supporting facilities that produce electric power from wind and are: (a) Connected to a common switching station, or (b) Constructed, maintained, or operated as a contiguous group of devices.

**§152.616 (HHH) WIND POWER  
GENERATION FACILITY**

(1) The procedure for taking action on the siting of a facility is a request for a conditional use. A public hearing pursuant to Sections 152.750-755 and 152.771 shall be held to determine if the applicant meets the siting requirements for a Wind Power Generation Facility. The requirement for a hearing will not apply to proposed facilities

for which EFSC is making the land use decision.

(2) The following information shall be provided as part of the application:

(A) A general description of the proposed Wind Power Generation Facility, a tentative construction schedule, the legal description of the property on which the facility will be located, and identification of the general area for all components of the proposed Wind Power Generation Facility, including a map showing the location of components.

(B) Identification of potential conflicts, if any, with: (1) Accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses; (2) Other resource operations and practices on adjacent lands except for wind power generation facilities on such adjacent lands; and (3) Accepted farm or forest practices on surrounding EFU/GF or NR land, including the nature and the extent of the impact of the proposed facility on the cost of such practices.

(C) A Transportation Plan, with proposed recommendations, if any, reflecting the guidelines provided in the Umatilla County's 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.

(D) An avian impact monitoring plan. The avian monitoring plan shall be designed and administered by the applicant's wildlife professionals. For projects being sited by EFSC, compliance with EFSC's avian monitoring requirements will be deemed to meet this requirement. 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) 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 applicant, this committee requirement may be waived or discontinued by the County.

(E) 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 applicant shall covenant not to sue owners, operators, contractors, employees, or invitees of

property zoned for farm use for generally accepted farming practices.

(F) A fire prevention and emergency response plan for all phases of the life of the facility. The plan shall address the major concern associated with the terrain, dry conditions, and limited access.

(G) An erosion control plan, developed in consultation with the Umatilla County Public Works Department. The plan should include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation with an appropriate mix of native vegetation or vegetation suited to the area. This requirement will be satisfied if the applicant has an NPDES (National Pollution Discharge Elimination System) permit.

(H) 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/rehabilitation.

(I) 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

(J) If the Wind Power Generation Facility

exceeds 20 acres in size, a Goal 3 exception is required as found in OAR 660-033-0130 (22).

(K) Information pertaining to the impacts of the Wind Power Generation Facility on: (1) Wetlands; (2) Wildlife (all potential species of reasonable concern); (3) Wildlife Habitat; (4) Criminal Activity (vandalism, theft, trespass, etc.) and proposed actions, if any, to avoid, minimize or mitigate negative impacts.

(L) A dismantling and decommissioning plan of all components of the Wind Power Generation Facility, as provided in §152.616 (HHH)(7).

(3) 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) Prior to commencement of any construction, all other necessary permits shall be obtained, e.g. Umatilla County Zoning Permit, road access and other permits from the Umatilla County Public Works Department, and from the Oregon Department of Transportation.

(5) The following requirements and restrictions apply to the siting of a facility:

(A) The Wind Power Generation Facility shall be on property zoned EFU/GF or NR, and no portion of the facility shall be within 3,520 feet of properties zoned residential use or designated on the Comprehensive Plan as residential. (For clarification purposes of

this section, EFU/GF/NR zones are not considered zoned for residential use.)

(B) Reasonable efforts shall be made to blend the wind facility's towers with the natural surrounding in order to minimize impacts upon open space and the natural landscape.

(C) Reasonable efforts shall be taken to protect and to preserve existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

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

(E) The turbine towers shall be of a size and design to help reduce noise or other detrimental effects.

(F) Private access roads shall be gated to protect the facility and property owners from illegal or unwarranted trespass, and illegal dumping and hunting.

(G) 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.

(H) 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).

(I) 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).

(6) To the extent feasible, the county will accept information presented by an application for an EFSC proceeding in the form and on the schedule required by EFSC.

(7) The applicant's dismantling of uncompleted construction and/or decommissioning plan for the Wind Power Generation Facility shall include the following information:

(A) A plan for dismantling and/or decommissioning that provides for completion of dismantling or decommissioning of the facility without significant delay and protects public health, safety and the environment in compliance with the restoration requirements of this section.

(B) A description of actions the facility owner proposes to take to restore the site to a useful, non-hazardous condition, including options for post-dismantle or decommission land use, information on how impacts on fish, wildlife and the environment would be minimized during the dismantling or decommissioning process, and measures to protect the public against risk or danger resulting from post-decommissioning site conditions in compliance with the requirements of this section.

(C) A current detailed cost estimate, a comparison of that estimate with present funds set-aside for dismantling or decommissioning, and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate will be reviewed and be updated by the facility owner/operator on a 5 year basis.

(D) Restoration of the site shall consist of the following:

(1) Dismantle turbines, towers, pad-mounted transformers, meteorological towers and related aboveground equipment. All concrete turbine pads shall be removed to a depth of at least three feet below the surface grade.

(2) The underground collection and communication cables need not be removed if at a depth of three feet or greater. These cables at a depth of three feet or greater can be abandoned in place if they are deemed not a hazard or interfering with agricultural use or other consistent resource uses of the land.

(3) Gravel shall be removed from areas surrounding turbine pads.

(4) Access roads shall be removed by removing gravel and restoring the surface grade and soil.

(5) After removal of the structures and roads, the area shall be graded as close as reasonably possible to its original contours and the soils shall be restored to a condition compatible with farm uses or consistent with other resource uses. Re-vegetation shall include planting by applicant of native plant

seed mixes, planting by applicant of plant species suited to the area, or planting by landowner of agricultural crops, as appropriate, and shall be consistent with the weed control plan approved by Umatilla County.

(6) Roads, cleared pads, fences, gates, and improvements may be left in place if a letter from the land owner is submitted to Umatilla County indicating said land owner will be responsible for, and will maintain said roads and/or facilities for farm or other purposes as permitted under applicable zoning.

(E) The applicant (facility owner/operator) shall submit to Umatilla County a bond or letter of credit acceptable to the County, in the amount of the decommissioning fund naming Umatilla County and the landowner as beneficiary or payee.

(1) The calculation of present year dollars shall be made using the U. S. Gross Domestic Product Implicit Price Deflator as published by the U. S. Department of commerce, Bureau of Economic Analysis, or any successor agency (the "Index."). The amount of the bond or letter of credit account shall be increased at such time when the cumulative percentage increase in the Index exceeds 10 percent from the last change, and then the amount shall be increased by the cumulative percentage increase. If at any time the Index is no longer published, Umatilla County and the applicant shall select a comparable calculation of present year dollars. The amount of the bond or letter of credit account shall be pro-rated within the year to the date of decommissioning.

(2) The decommissioning fund shall not be subject to revocation or reduction before decommissioning of the Wind Power Generation Facility.

(3) The facility owner/operator shall describe the status of the decommissioning fund in the annual report submitted to the Umatilla County.

(F) If any disputes arise between Umatilla County and the landowner on the expenditure of any proceeds from the bond or the letter of credit, either party may request non-binding arbitration. Each party shall appoint an arbitrator, with the two arbitrators choosing a third. The arbitration shall proceed according to the Oregon statutes governing arbitration. The cost of the arbitration (excluding attorney fees) shall be shared equally by the parties.

(G) For projects sited by EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with the dismantling and decommissioning requirements of this Section 152.616 (HHH)(7).

(8) A bond or letter of credit shall be established for the dismantling of uncompleted construction and/or decommissioning of the facility. (See §152.616 (HHH)(7)) 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.

(9) The actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, connecting lines, and transmission lines,

shall be provided to Umatilla County once commercial electrical production begins.

(10) A summary of as built changes in the facility from the original plan, if any, shall be provided by the owner/operator.

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

(B) An amendment to the conditional use permit shall be required if proposed facility changes would: (1) Increase the land area taken out of agricultural production by an additional 20 acres or more; (2) Increase the land area taken out of agricultural production sufficiently to trigger taking a Goal 3 exception; (3) Require an expansion of the established facility boundaries; (4) Increase the number of towers; (5) Increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to the repowering or upgrading of power generation capacity. Notification by the facility owner/operator to the Umatilla County Planning Department of changes not requiring an amendment are encouraged, but not required. An amendment to a Site Certificate issued by EFSC will be governed by the rules for amendments established by EFSC.

(12) Within 120 days after the end of each calendar year the facility owner/operator shall provide Umatilla County an annual report including the following information:

(A) Energy production by month and year.

(B) Non-proprietary information about wind conditions. (e. g. monthly averages, high wind events, bursts)

(C) A summary of changes to the facility that do not require facility requirement amendments.

(D) A summary of the avian monitoring program - bird injuries, casualties, positive impacts on area wildlife and any recommendations for changes in the monitoring program.

(E) Employment impacts to the community and Umatilla County during and after construction.

(F) Success or failures of weed control practices.

(G) Status of the decommissioning fund.

(H) Summary comments - any problems with the projects, any adjustments needed, or any suggestions.

The annual report requirement may be discontinued or required at a less frequent schedule by the County. The reporting requirement and/or reporting schedule shall be reviewed, and possibly altered, at the request of the facility owner/operator. For facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.

**Associated Code Changes:**

**Add to Section 152.060 (F):**

“(See specific criteria for Wind Power Generation Facility, Section 152.616 (HHH).)”



**Add to Section 152.085 (F):**

“(See specific criteria for Wind Power Generation Facility, Section 152.616 (HHH).)”

**Add Section 152.103 (G):**

“(See specific criteria for Wind Power Generation Facility, Section 152.616 (HHH).)”

**Amend Section 152.616 (T):**

After the phrase “This does not include” add “Wind Power Generation Facility (See specific criteria, Section 152.616 (HHH), or ...”