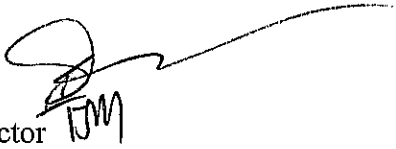


January 30, 2012

MEMO

TO: Board of Commissioners  
FROM: Doug Olsen, County Counsel  
Tamra Mabbott, Planning Director  
RE: LUBA Remand Cosner et al versus Umatilla County  
(CUP Standards for Commercial Wind Energy Facilities)



This is a follow-up to the discussion at your January 18<sup>th</sup> Board meeting. You asked staff to clarify the process for addressing the LUBA remand and to make recommendations on options to approach the remand issues. You clarified your intent was to open a hearing for the remand issues only, not the entire record. You directed staff to move forward deliberatively and without delay. You also directed staff to collaborate with the CTUIR on the Goal 5 issues.

#### PROCESS

The LUBA remand requires that the county develop and adopt new Findings to address the four issues that were remanded. Findings are required to be adopted in a Public Hearing. The hearing can be limited to those items under remand consideration and not the entire record. A hearing date has been scheduled for February 28<sup>th</sup>.

#### OPTIONS FOR REMAND ISSUES

##### I. FIRST AND SECOND ASSIGNMENT OF ERROR.

###### Two-Mile Setback

LUBA upheld the two-mile setback requirement but did not uphold the method for providing a waiver to the setback. This is in two components, one for adjoining property owners, and the one for city councils.

###### Options for County Remand Consideration:

1. Adopt standards for granting of a variance or exception to the setback; which will be granted by the county.
2. Make no changes to the Ordinance which would leave the option for submitting an application for a Variance. This is the "do nothing" option.
3. Specifically prohibit a waiver or variance to the setback.
4. Refer back to Planning Commission for its consideration and input.

For the adjoining property owners, Staff recommends option 2, in order to move in a timely manner with the remand. Option 1 can be explored in the future and an ordinance adopted at a later date. For city councils, Staff recommends that any specific variance or exception to these setbacks be dropped.

II. SEVENTH ASSIGNMENT OF ERROR

Goal 5 for the Walla Walla Watershed

LUBA recognized that the county did not need to inventory new Goal 5 resources, specifically energy resources. However, LUBA found that the county “must undertake to perform at least some of the ESEE analysis set forth in OAR 660-023-0040(2) through (5), and must adopt findings, based on that ESEE analysis explaining its choice to impose additional limitations on conflicting uses.” In summary, LUBA did not question provisions intended to protect the watershed, but, since the overlay referenced protection of existing Goal 5 resources, and where this is a Post Acknowledgement Plan Amendment (PAPA), the county is required to conduct the ESEE (Environmental, Social, Economic and Energy) analysis.

III. SIXTH ASSIGNMENT OF ERROR

Consistency with Comprehensive Plan Policies

LUBA found that the county erred by failing to address comprehensive plan policies that encourage energy production in the county. Staff proposes to draft Findings to show compliance with the four identified Comprehensive Plan Policies. Staff believes this should be a fairly straightforward explanation, generally because the county in fact allows commercial wind energy facilities as a conditional use; the county has authority to not allow in farm and forest zones. Additionally, the siting standards provide a clear path for developers.

NEXT STEPS

Staff seeks feedback from commissioners on the recommended options. Staff will then draft Findings accordingly. Staff has contacted a private law firm to provide assistance in drafting the remand Findings.