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THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY RECORDS

STATE OF OREGON

In the Matter of Amending)	
Development Code for Wind)	ORDINANCE NO. 2012-05
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

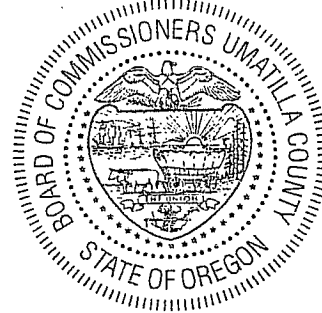
W. Lawrence Givens, Chair

Dennis D. Doherty

Dennis D. Doherty, Commissioner

William S. Hansell

William S. Hansell, Commissioner



ATTEST:

OFFICE OF COUNTY RECORDS

Deau Hemphill

Records Officer

