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LINDA BROWN
COUNTY CLERK

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
April 4, 2012

PRESENT: Rod L. Runyon, Chair of County Commission
Scott C. Hege, County Commissioner
Sherry Holliday, County Commissioner
Tyler Stone, Administrative Officer
Kathy White, Interim Executive Assistant

At 9:00 a.m. Chair Runyon called to order the Regular Session of the Board of Commissioners.

Chair Runyon asked if there were any corrections or additions to today's Agenda.

Chair Runyon added the routing of purchase orders, Gorge Commission - April 10th meeting, the Cove on I-84 to the discussion list.

Commissioner Holliday added a cut-off date for information being submitted for inclusion to the BOCC session packet.

OPEN TO DEPARTMENTS

John Roberts, Planning Department, presented information to the Board regarding PGE's Cascade Crossing Project, the co-location of power lines from Bethell to Boardman, of which about 16 miles will cross into unincorporated parts of Wasco County. This application is application is being reviewed by EFSC. PGE's application has been deemed complete which means their clock has started ticking to get this project reviewed and completed.

EFSC has sent out a request for comments. Mr. Roberts brought with him the application exhibit (K) that is applicable to Wasco County. Comments are due by Friday, April 6, 2012. EFSC has designated the Wasco County Board of Commissioners as a special advisory group. The Planning Department has

reviewed and prepared comments which are to be accompanied by a letter from the County Commissioners.

Thursday, April 5, 2012, the Planning Department will have comments along with a cover letter for BOCC review. They will be available to answer questions. Once the letter and comments have been reviewed and signed, the Planning Department will submit them to EFSC by the deadline.

We have not seen any issues but view this as an opportunity to point out any shortcomings in the application and as a county, what type of conditions do we think are important to this application. We expect to have seven or eight suggested conditions for the application, such as:

1. Enter into a road use agreement
2. Enter into a weed management plan
3. Address fire suppression
4. Reseed lay down areas
5. Temporary housing concerns for work crews

Overall most of the issues have already been mitigated. The project is scheduled for a 2015 construction start and a 2016 completion.

Commissioner Hege: Is the application open for public comment?
It is not to that point yet. That will start after comments from the affected jurisdictions.

Commissioner Runyon: Our Hunt Park project may play a part in the solution for temporary housing.

Commissioner Holliday: When this project was first presented to us in 2008, much more of the line ran through Wasco County. The Warm Springs Tribe lobbied to have it go through tribal land. Wasco County lobbied to have it remain in the County because it meant millions of dollars in tax benefit. In the end, we will still get some of that benefit.

CONSIDERATION of items listed on the Consent Agenda of April 4, 2012, (Attached).

Item #1 Approval of Title III (amended)

Approved unanimously

CONSIDERATION of items listed on the Discussion List of April 4, 2012, (Attached).

Item #1 April 10, 2012, Gorge Commission Meeting

Columbia Gorge Commissioner Roger Nichols stated that at the upcoming meeting they will be starting to discuss the framework for how to deal with expansion applications. These are very preliminary discussions. He will report back to the Commission as to progress. Of course, the Commissioners are welcome to attend the meeting.

Item #2 The Cove on I-84

An email from Rep. Huffman has been circulating regarding the Cove across from Klindt's farm on I-84 and making that more accessible to the public. It is used as a windsurfing and swimming area. Many years ago there were plans to make that a public area, but parking was always a problem – at one point they banned parking altogether. Some research has been done; the planning department located plans from about 25 years ago. There is really nothing coming forward for development of the Cove at this time.

Item #3 Routing & Purchase Orders

Commissioner Hege received an email appointing him as second approver for routing and purchase orders. Sherry has been doing the secondary approvals. There seems to be a glitch in the system as all three Commissioners have been receiving notifications. Tyler Stone believes it may be necessary to get Eden involved. Commission Chair Runyon stated that sometimes the emails come from individuals, rather than system generated. Those individuals may not be clear regarding who should receive the email and therefore send it to all. He would like to see some standardization with notification coming only to the Chair. Tyler will check on it.

Item #4 Cut-off Dates for Document Submission for Board Packets

Currently the cut-off date is the Thursday prior to scheduled sessions. Perhaps it should be as early as Monday of the week prior to scheduled sessions. With the transition to a new Executive Assistant, it will be some time before the process smoothes out. The department heads will be reminded or the importance of timely submission. If they cannot, they are always welcome to present during the open section of the session from 9:00 – 9:30 a.m.

Item #5 Letter to the White House Re: 9th Circuit Court Ruling on Logging Roads

This ruling will be very expensive to implement; $56 million for the permitting alone. Nick Pepper represents the group lobbying for a review of the decision. Commissioner Hege interjected that although the letter states that the forestry industry contributes millions to the economy, he believes it is in the hundreds of millions. Commission Chair Runyon asked that the words "my county" be changed to "our County."

{{{The letter is supported by the Board with the requested changes. Corrections will be made and the letter will be returned to the BOCC for signatures today.}}}

The Board recessed at 9:28 a.m.

The Board reconvened at 9:30 a.m.

CONSIDERATION of items listed on the Agenda of April 4, 2012, (Attached).

Item #1 Continuation of Public Hearing on Chapter 19 Energy Ordinance Planning Legislative Hearing PLALEG-09-06-003

Commission Chair Runyon: This legislative hearing is to consider recommending amendments to the Wasco County Land Use and Development Ordinance related to energy production, consumption and conservation, reformatting and modernizing language that is out-of-date or incorrect, creating consistency with State regulations, and making other recommendations appropriate for Wasco County. This hearing is closed to public testimony; the Board has accepted written testimony until the opening of this meeting. The purpose of today's hearing is for deliberation, staff report changes based on evidence, testimony and public comment. Commission Chair Runyon introduced John Roberts, Director of the Wasco County Planning Department.

Mr. Roberts introduced his staff: Jeanette - Senior Planner, Joey – Associate Planner. He then presented the Staff Report, a clean version of Chapter 19, and a document showing all the proposed changes (included in Board packet) to the Board.

This is the 5th public hearing on the proposed changes to the Chapter 19 Energy Ordinance. This process has included a lot of hard work and good research. The public has been included in this very transparent process in a constructive way.

Although there are changes to sections 1,2,3,4, 15, and 19 totaling 100 pages. We really need to address a couple sentences in those 100 pages. These amendments address more than just wind energy and will streamline some of the planning and improve code. Todd deserves a lot of credit for the amount of work he has invested in the project. No regulation is perfect and all are subject to interpretation; if we get to a place where it is not working, then we will have to make adjustments just as we are now.

The other challenge is that "what-ifs" are unlimited. We have seen many of those already, both internally and with the public. At some point, we must move forward to adoption. Chapter 19 needs to be updated as it is no longer useful considering it is based on 1980's technology.

Traditionally, commercial interests get most of the attention, but the non-commercial applications will be used the most. Good definitions have been added and it will categorize applications giving the Planning Department better guidelines for applying the regulations. Related and supporting facilities are now addressed and comprehensive planning will be included. Referrals to EFSC will be easier.

Commissioner Hege: What issues will we see in the way of nuisance issues?
The new regulations will allow adjacent property owners to look at potential impacts of building. The new regulations give more power to adjacent property owners.

Commissioner Hege: Will the installation of solar panels, for instance, be easier?
It makes the decision faster as we will have better criteria.

At the March 20th hearing and following that hearing, we have received written comments, which have been included in your board packet. Those comments fall into three categories: setbacks, noise standards and participating vs. non-participating land-owners.

Setbacks

In the current ordinance there are only two setbacks and they are not clear regarding commercial and non-commercial application. Fall height is not clearly defined. We propose four setbacks:

- 1 mile non-resource zones (measure from property line and with no provision for adjustment or waiver). More complicated but addresses many concerns of residences that live in rural-residential properties.
- ¾ of mile city limits of Urban Growth Boundary (provision for adjustment;

- Non participating landowner resource lands: 2/3 of a mile residence on ag and forest land (resource lands); with adjustment provision
- Participating landowner resource lands – no setback
- Other – do have some fall-height provisions for roads, major and minor utilities (1.5 and 1.1 fall height)

As wind energy is developed, the adequacy of these setbacks will become clearer. It is unlikely, but possible that wind energy production will be located near residential zones. The adjustment provision of the ordinance allows for some flexibility.

Noise

Noise standards are difficult to address. No matter what setbacks we write the DEQ noise standards are strict and can override county ordinances. Measurement of noise levels is complicated. It is incumbent upon participating and non-participating landowners to serve as the checks and balances for enforcement of these regulations. The DEQ requires a 1.5 mile setback from residences. A signed waiver can reduce that requirement to as little as ¼ mile.

Commissioner Hege: How would a landowner know if the noise levels are exceeded? What would the County do? Anything less than 105 megawatts is reviewed by the County. Anything over that level gets a referral from the State in which case we would defer to the State for approval. Smaller projects would require diligence on our part to be certain regulations are enforced.

Commissioner Hege: Is there a process, post-construction, for a non-participating landowner to file a complaint? Yes, but we would have to review statute and it would probably go through the state.

Participating vs. Non-participating Landowners

As Todd said at the February 15th, meeting: Our setbacks are a safe harbor, a safety net. People not participating in the project are still protected and have an opportunity for influence as it relates to the impact on them. To be participating landowners must have signed consent on file.

Suggested and Final Changes

The staff report outlines what has been changed since March 4, 2012:

- Lighting
- Non-resource standards

- Road use
- Decommissioning
- Setbacks

Final changes are in some ways a response to recent comment (see Exhibit A).

Radar triggered lighting will not be required as the technology is not practical for full implementation. Radar triggered lighting requirements may be applied on a case-by-case basis. Language has been added to minimize light pollution.

Setbacks are outlined on page 2 of Exhibit A and we have reviewed those today.

The Planning Department will apply the following six criteria to landowners applying for permits:

1. Consent
2. Compliance with DEQ
3. Project would not force change to adjacent land for farm/forest use
4. Project would not unduly burden existing infrastructure
5. Project would not impair safety
6. Project would not adversely affect the environmental resources

Non-Resource Zone

Setbacks will be 1 mile from a property boundary - no adjustments. DEQ requires 1.5 miles. Setbacks will be ¾ mile setbacks from city limits or urban growth boundaries or urban reserves with adjustments available. Consent would come from the city rather than the landowner.

Commissioner Hege: Hypothetically, how would that happen? (Mr. Roberts) It would be part of the application process. When the landowner makes the request, they would be advised to go to the city for consent. The county would not move forward without that consent. The city would probably go through a similar process of public hearings. Whatever their process, we would accept their consent or denial.

Commission Chair Runyon: We have gone through the questions. I was worried that the county had provisions and was being pressured into making unnecessary changes. However, John has made a case for the changes being necessary. Since the State noise rules override the County, are regulations

necessary at all? (Mr. Roberts) Gaps have been indentified and filled. Participant and non-participant rules are necessary.

Commission Chair Runyon: I am happy to see that non-participants will have a voice.

Commissioner Holliday: I agree with my colleagues in their accolades for the work done by the Planning Department. I feel they have more than adequately addressed public concerns and Commission concerns. Wasco County has been criticized for being too restrictive and this illustrates our flexibility. I especially appreciate the deference to cities to make their decisions regarding requests to alter waivers.

Commissioner Hege: Does decommissioning have to be funded from the beginning and maintained throughout the life of the project? Is there a mechanism for funding post-production? How is the County addressing this issue? (Mr. Roberts) If it is an EFSC project there is no leeway. The County can negotiate the specifics of decommissioning plans and will do so case by case. There will be decommissioning agreements with oversight.

Commissioner Hege: Are we not requiring the same regulations as the State is for decommissioning? (Mr. Roberts) We are more flexible and can negotiate the conditions of the decommissioning plan.

Commission Chair Runyon: I was concerned that regulations would create prohibitive expense. I am pleased that the proposed regulations alleviate that.

Commissioner Hege: How are large-scale solar projects going to be dealt with as they relate to nuisance regulations? (Mr. Roberts) There are standards for evaluating that outline evaluating that as part of the approval process for both commercial and non-commercial applications.

Commission Chair Runyon: This ordinance address the spectrum of energy sources including hydro, wind, petroleum, and solar. If, down the line, we find gaps or inadequacies, we can make adjustments to the regulations.

Commission Chair Runyon outlined the choices before the Commission:

- Continue the discussion to a future date
- Approve proposed amendments
- Deny proposed amendments
- Approve some, but not all proposed amendments

Commissioner Holliday: I hereby make a motion to approve the proposed amendments to chapters 1, 2, 3, 4, 15, and 19 of the Wasco County Land Use and Development Ordinance regarding planning case: PLALEG-09-06-003, approved by the Wasco County Planning Commission, in light of the applicable criteria and findings presented in the staff report to the Board dated February 15, 2012, and as contained in the attachment titled "Land Use and Development Ordinance Amendments," Final Draft, dated April 4, 2012," with the following additional amendments: Attachment A and Staff Report Exhibit A.

- The planning department retain discretion to make non-substantive changes to the amendments to create and ensure consistency with: title page, table of contents, formatting page numbering, headers, spacing, indentation, underlining, grammar, incomplete sentences, and cross referencing between chapters;
- With additional amendments as proposed by staff as presented today

Commissioner Hege seconded the motion.

Commission Chair Runyon: Is there any further discussion?

Commissioner Hege stated that this ordinance is a good balance of interests, public and private. Sherman County has enjoyed broad based benefits from their wind energy program.

Commission Chair Runyon: They would like to use our regulations as a model. Some think the process too long, others too short. We are just providing an opportunity for stakeholders to be heard. He, again, expressed his appreciation for the efforts and dedication of the Planning Department staff.

Commissioner Holliday: We didn't make this decision in the dark. We visited Sherman County with private citizens to tour their facilities. Our plan addresses both ends of the County.

{{{The motion was approved.}}}

The Board recessed at 10:38 a.m.

The Board reconvened at 10:48 a.m.

CONSIDERATION of items listed on the Discussion List of April 4, 2012, (Attached).

Item #6 Legal Counsel for Wasco County

Kathy McBride was doing a lot of the legal review for DA Nisley. That work is now falling back to DA Nisley. The discussion is around continuing that practice or finding an alternative. Tyler Stone suggested that there are a number of alternatives:

- Keep the current system, training the new assistant to fill the role Kathy McBride had in the process
- Hire a paralegal
- Hire an in-house attorney who would take over all of the County's legal work
- Retain a law firm
- Move all of the duties to County Counsel

Mr. Stone went on to say that with a new assistant soon to be hired, this would be a good time to make any changes.

DA Nisley added that legal counsel would not be a person who prepares documents but rather answers to the Commission and represents the County and the interests of County officials in their capacity in the county. Dan Olsen is former county counsel for Washington County. He has indicated a willingness to be on retainer @ $500 per month with and hourly rate beyond the minimum time. That is an option that allows you to not hire a full-time county counsel. In 1999 I took on that role as a supplement to my duties as District Attorney. I am happy to continue to assist Tyler in researching options. The advantage of not having a full-time attorney is that you can access specialty attorneys.

Commissioner Hege: The one thing I thought of is that we were already paying Kathy a stipend to do the legal work. We can redirect that money toward another solution. A full-time person would be far more than that. Kathy's replacement will be more administrative in their role and will move to Tyler's office. With the uncertain economy, we should be conservative in our commitment to future expenditures. We should be prudent in how we manage our resources for filling these needs.

Commissioner Holliday: I agree with Scott in that we don't want to spend too much. Perhaps we can hire someone part-time. Can Eric's office support this function?

DA Nisley stated that he does not believe that the county is large enough to have a dedicated counsel. He suggests that they hire someone who would probably be

remotely located. Most counties have someone like that. A staff person would prepare the document and send it to counsel who would review and return to county.

Mr. Stone observed that the biggest challenge is having someone who is capable in this position who can develop the legal documents. Can the new person manage the packet and prepare the documents? Is there anyone on Eric's staff who could handle that?

DA Nisley responded that he has never had anyone on staff to do that, Kathy did that. They worked together over the years to for her to develop the necessary skill set to do that. An attorney still has to approve the document as to form. The County may want to hire a part-time legal secretary.

Tyler pointed out that if the County contracts out, someone in that office would prepare the document and the County would be charged.

Commissioner Holliday said that it is not rocket science; surely someone can be trained to do that. Eric could work with someone for that.

DA Nisley said he would be happy to do that, but Tyler may have some special projects that will need outside counsel.

Tyler reminded the Board that Kathy also took care of properties and really didn't have the time to keep up on that. There are still properties out there that need attention.

DA Nisley said that the title companies could be doing some of that work.

Commission Chair Runyon interjected that what needs to be done as a group is to determine what the County wants the Executive Assistant to be doing. Do we need to do a public notice for our consideration? Can we put out an RFP?

DA Nisley responded that they could do that.

Mr. Stone: There is an opportunity here to make some decisions. Are we going to not use Eric in the same way we have traditionally done?

Commission Chair Runyon: If we go in the direction of an RFP, we would not need Eric.

DA Nisley: What I do now would cost you more to go outside to get.

Commissioner Holliday: We really need to determine what it is we want them to do and where you want them to do that before we can determine what we are looking for. We need to develop some kind of RFP.

Eric said that Kathy McBride had a template she worked from to create the documents.

Commission Chair Runyon: We will have to entertain more discussion. Tyler will bring an outline of duties to the Commission for review.

CONSIDERATION of items listed on the Agenda of April 4, 2012, (Attached).

Item #2 Enhanced Interoperability Grant Funding Application

Kathi Hall outlined the documents provided to the Board in their packet.

The history is that the state had a grant opportunity for immunization grant announced in August with a deadline in the fall. They did not have enough applicants and so they reopened for applications in February. We submitted and were awarded the $35,000 for the enhancement of our current EMR to work with the State's immunization database. The first $48,650 was too high and we asked that they include only the immunization part, first year is $34,500. Maintenance fees will be $4200 and $4400 in consecutive years.

Monica Morris, Finance Manager: – This module is in addition to the medical records module they have recently purchased. Public Health has some budgeted funds that contractually cannot be spent this year. With the new request, the cost of the module is what the grant amount is. The grant will not cover maintenance fees -- $21K and will grow each year. They do have some Medicaid money coming in that will help pay for that. My only concern is that the annual cost is roaming at a time when public funds are not stable. They are looking at breaking out into their own district. They do need this or something like this to meet their meaningful use obligations.

Commissioner Hege: What are you currently doing? (Ms. Hall) We have to manually enter into both systems.

Commissioner Hege: *It is a cost of about $50K – wouldn't it be less expensive to hire someone to do data entry? The payback is 17 years. Won't the software be outdated in 5?* (Ms. Hall) That is what the maintenance fees are for, so that the vendor will keep us up-to-date. I see it being viable for 15-20 years.

Ms. Morris: The true cost of the asset is $34K, with a maintenance fee each year.

Commissioner Holliday: *If the district goes out on its own, how will they generate the revenue?* (Ms. Hall) We expect to double the output of our new officer.

Ms. Morris: If I were to look at this as my department, I would have to look at ROI both in dollars and outcomes. Is the cost and value comparable?

Ms. Hall: If we do not meet meaningful use we will be fined in the future.

Commission Chair Runyon: How long is the contract? (Ms. Hall) It is a 3-year contract.

Mr. Stone: Once you are in, you are really in for at least 5 years. This is similar to Eden, but dealing with public health.

Paul Ferguson, Information Services Manager: A big part of this is linking up with the state program. As their systems develop and increase, this may put us in a position to take advantage of their improvements. This software will allow our system to communicate with the state system. It should also allow for communication with other entities.

Commissioner Hege: We just started using this vendor. How is it going? (Ms. Hall) It is going well. We have bi-monthly trainings with the vendor who has been very supportive.

Commission Chair Runyon: Do we really have a choice? (Mr. Stone) There is always a choice, but Public Health has renegotiated so that it is within the grant. The issue is really the ongoing maintenance costs. I look more favorably on it, but it would be imperative that Public Health meet their commitment to increase revenue/decrease costs to pay for the ongoing costs.

Ms. Morris: It will still have costs. Just because we get a grant doesn't mean we should take it. There are always costs to the County associated with any grant.

Commissioner Hege: In terms of the Health District Board, are they aware of this issue? (Ms. Hall) It has not really been brought before the Health District Board because it has to be approved by BOCC first.

Mr. Stone: The grant must be approved with and exemption from findings for the vendor since we are already using this vendor.

{{{Commissioner Hege moved to accept and approve Agreement #138468 State of Oregon HS-HER Enhanced Interoperability Grant Agreement. Commissioner Holliday seconded the motion. Motion passed.}}}
{{{Commissioner Hege moved to exempt vendor from bidding process – Special Exemption 8. Commissioner Holliday seconded the motion. Motion passed.}}}

{{{Commissioner Hege moved to accept and approve the Net Smart Addendum included in the Board packet. Commissioner Holliday seconded the motion. Motion passed.}}}

Item #3 Water Shed/Mosier Project

Kate Conley, Watershed Coordinator, explained that they are currently in the design phase of the Honald/Byers Side Channel project which is their 1st priority. Ms. Conley then led the Board through a Power Point presentation outlining the benefits of the Honald/Byers Side Channel project. (see attached) The project budget is included in the Power Point.

Commission Chair Runyon observed that this will be good for homes in the flood zone.

Ms. Conley explained that they are requesting a letter of support and estimate of in-kind match by April 13, 2013, to be submitted with their grant application.

Commission Chair Runyon suggested that she contact Public Works to discuss the possibility of in-kind from that department.

Ms. Conley: Who would be my point of contact for the letter? Mr. Stone.

Commissioner Holliday: At some point in the future we might be able to provide a work crew to help.

The Board recessed for lunch at 12:05 p.m.

The Board reconvened at 1:00 p.m.

Item #4 The new Oregon Youth Authority Program at NORCOR

Jeff Justesen, NORCOR Juvenile Facility Manager, introduced Josh, who is participating in the program.

The decision for NORCOR to enter into contract for a residential treatment program began 1.5 years ago. The state budget called for a reduction of 525 of 900 beds at youth correctional facilities. Of the 900, a certain number were for

Measure 11 offenders (public safety beds). The reduction would devastate system's ability to work with youth. The final budget reduction was150 beds. Closed custody beds are the most expensive beds. Options have been expanded in residential community settings. We are looking to deal with youth who are on probation and enhance the communities' ability to deal with these youth who would otherwise be unsupervised.

A year ago we began work on a proposal for 12 beds, BRS level 5 which allows for federal financial support for these beds. Level 5 is the highest level. NORCOR has to provide certain staffing ratios and make an hourly commitment. The RFP covers youth 12-25 years old, usually between the ages of 16 and 20, accepting youth from any county throughout the state. Inappropriate referrals can be denied and some referrals are given priority based on geography. Some Youth are in need of assessments for placement and stay in the temporary beds during that time. Youth at risk from revocation from escaping non-secure settings are not ready for treatment and stay. These are youth who endanger other youth in residential settings or who have been discharged from residential programs for a variety of reasons.

Our program focuses on TOOLS: Taking Ownership of Life Schools. CJ Tool runs the program with a focus on education and life skills. The structure and routine of the program helps support these goals. Those who do not have GED or diploma go to school during the day at NORCOR. We try to keep detention groups separate from the Tool Group. District 21 provides the education piece which is required by contract. There is a teacher and an instructional assistant (new to the program this year).

Life skills are also taught. For instance Josh participated in work readiness programs. Youth do different jobs in the facility and greenhouse where the goal is to teach the good work habits. We also do evidence based groups for behavior modification. Criminal thinking groups are also run. Youth are involved with community service through a variety of organizations – Youth Services, Home at Last, etc. We are also working on mentorships and apprenticeships.

One of the reasons education is important: youth in custody have a recidivism rate of 28% with no education, 14% if they have an associate's degree, 8% with a bachelor's degree, and 0% with a master's degree. Mr. Justesen turned the floor over to Josh, who is the oldest youth currently in the program.

Josh explained that he was repeatedly in trouble, getting many parole violations. He has spent quite a bit of time in youth facilities. He went to a Polk county independent living program and moved back to his home town. Without a solid foundation he lost his way and became involved with drugs. His Parole Officer began to work intensively with him telling him he was nearing his last chance and

wanted him self-commit to rehabilitation. He was arrested again and his Parole Officer decided to send him to the transitional program at NORCOR.

Since being at NORCOR, he has gained 50 pounds and is doing much better. He finds the mental health support to be extremely helpful. Jeff Albin is the man who runs the groups. This part of the program has fostered the most growth. He goes to meetings/groups daily. The staff is very willing to work with the youth. He also participates in yoga meditation and AA. The school appears to be excellent. The TOOLS program is comprehensive. Josh thinks it should be expanded. It has really turned him around and he is ready to go out and be part of the community. He didn't want to go into a sobriety program but now has extended his time because he wants to enter an independent living program that supports sobriety.

Mr. Justesen wanted the board to know that he didn't coach Josh. He explained that yoga, meditation and drum therapy are evidence-based programs for reducing anxiety, stress and depression. Two-thirds of the males entering the program have drug and alcohol issues; a substantial percentage has mental health issues. We are here to prep them to move on.

Commission Chair Runyon: How old are you Josh? (Josh) I recently turned 20.

Commission Chair Runyon: Do you realize how many skills you have? You have great skills. (Josh) They've been gone for about a year. My drug use – I thought I was gone forever. This is the longest I've ever been clean for.

Commission Chair Runyon: Well, you're not gone forever; you've got some great communicative skills. Keep working on it.

Commissioner Hege: Is Josh a shining example? What kind of problems do you deal with? (Mr. Justesen) Josh presented with behaviors that are typical of the kids we see. Some are not doing as well, but many have made substantial progress as has Josh.

Commissioner Holliday: Are the youth both male and female? (Mr. Justesen) There are just males in our program. Females are sent to other facilities for women only. The facilities are gender specific.

This is an expensive program to run, but we felt it was important to keep it running and investment in our youth and our future. There is currently an RFP out for more beds and we would like to double the number of beds we offer. Most facilities have openings available immediately, but we have a wait list for our program. We are still new and changing all the time. The kids who are in the program now are helping to build the program as we learn what works for them. Six months from now it will look different still.

We are breaking even now. If we expand the program we will add additional staff. It is important that we are sustainable and perhaps have a profit for reinvestment.

Commission Chair Runyon: Expansion will also add jobs to the community which is a big deal.

Commissioner Holliday to Jim Weed: If you had had this program earlier, would it have positively impacted the adult criminal population? (Mr. Weed) Absolutely! We have a far greater opportunity to affect change in the juvenile population than we do in the adult population.

Mr. Justesen: The new jobs would be bachelor level education positions. We are also building at NORCOR to make ourselves more attractive to the state and federal government to contract with us. This includes green spaces and recreational areas. Jim is a huge supporter of this pilot program. We are working on cost effectiveness, growth and a plan for NORCOR in the future.

Commissioner Hege to Mr. Justesen: How do the mentorships work? Do you need more businesses to step up? (Mr. Justesen) We will in the future. The youth have to earn the right to participate in the mentorship program. They are always supervised. CJ Tool is already working on that.

Item #5 Burn Restriction Ordinance Request – City of The Dalles

Julie Krueger, City Clerk, along with member of the City's Burn Ordinance Committee - Terry Meyers, Dan Hamill and Karen Murray from Tri-County waste appeared before the Board to request that they extend the City ordinance to County's urban growth boundary. They believe the extension would help to avoid confusion and protect citizen's health.

Dan Hamill from the Fire District said that his experience in another county that was faced with an air quality issue was that they enforced a ban. One of the issues that swayed them was the fact that sometimes the restriction applied to one person, but not to a neighbor across the street. Mr. Hamill recommends adopting the ordinance county wide and would like to open a discussion with the county.

Karen Murray from Tri-county supports the idea and would like to see it be adopted county-wide and support it with programs for yard debris collection and shred events.

Terry Meyers, lay member of the committee, added that the air we breathe is not contained by geographical boundaries. It makes sense to have it cover the entire area.

Commission Chair Runyon: This has been a topic of my morning group. I have a burn barrel. I don't burn things I shouldn't. I get a legal permit. Under the ordinance, if I have a barrel I can't burn but if I dump it in my yard, I can.

Mr. Hamill: I can speak on the fire-response side when it comes to burn barrels. Unfortunately, we do have the individuals out there who are burning plastics. If you were to follow the DEQ rules, only natural products can be burned. The argument then becomes – if you are burning letters that have plastic windows, technically, by statute, you are burning non-legal stuff – but that's pretty minimal. We have other people illegal out there who are just flat burning household trash.

Commission Chair Runyon: Don't we already have laws? (Mr. Hamill) Yes, but DEQ doesn't have enforcement ability. Neither do local fire departments that enforce city ordinance. The majority of burn barrels in the community cannot meet ordinances regarding distances from buildings and property lines. This ordinance was spearheaded by citizens in conjunction with officials who served as advisors.

Commission Chair Runyon: My barrel is proper and I think it is safer than a pile in my yard. The issue regarding the smoke crossing the line could go on forever. DEQ has a 3-mile radius for burning. We allow the orchardists to burn diseased trees as agricultural.

Ms. Krueger: Part of the theory is that we only want to go out to the urban growth area to complete the area.

Commissioner Hege: We have had this same problem with codes enforcement. County codes enforcement and city codes enforcement have not been able to effectively deal with that issue. Wherever we draw the line, there will be someone on the other side of that line to whom the regulations do not apply. The people who live more rurally will probably not like this idea.

Commissioner Holliday: In Maupin, we have burn barrels. We have someone who checks them and reports violations. I would have to hear from the folks who would be affected before I entertained passing an ordinance.

Ms. Meyers: When serving meals on wheels, I found that there are many people with breathing issues and many geographical pockets where the smoke hangs in the air.

Commission Chair Runyon: I understand what you are saying. There are those who object to wood burning stoves. We will have to gather more information.

Mr. Hamill: I understand the point about the arbitrary line. For enforcement, the urban growth areas will be easier. If they don't meet the requirements for a fire department response, they will be referred to codes enforcement. The straighter urban growth area boundary line would make it easier for enforcement. The current City line is zig zaggy.

Commissioner Holliday: We hope that public input will give us some direction. Keith and John can help with that. Dan will also offer support.

Ms. Krueger offered to put together information that may help with the process.

Item #6 Surplus Vehicles

Sheriff Lane Magill told the Board that in February they had a meeting to discuss what vehicles needed to be surplused. He is here requesting that the county release the following vehicles for disposal.

- 1979 Ford ambulance – it has been unused for 5-7 years (auction)
- 1996 Jeep Cherokee (Community Corrections Unit 9601) – Based on the County Vehicle Policy it has run out of time.
- 1999 Ford Explorer (IT Unit 99-34) has met time and mileage requirements
- 2002 Impala (Wasco County Planning Unit 02-07) has met both the age and mileage requirement

Sheriff Magill recommends liquidating all the above listed vehicles, except the ambulance, by means other than the spring auction where. He is confident the County can benefit from high sale prices through a sealed bid. He has already spoken to the District Attorney about this option. Based on Sheriff Magill's research the county could get 2-3 times the money than at auction. He proposes running a 30 day ad for $75-$110 and perhaps listing the vehicles on eBay and/or craigslist. He anticipates $6,000 - $7,000 in return rather than the $1,500 that might be expected from spring auction. If unsuccessful, the County could always hold them for auction in the fall.

In addition, he plans to move 3 of the patrol vehicles out. Two will go to the Assessor's office and one to Planning. The vehicles that are being replaced at the Assessor's office will go to Planning and Corrections.

He went on to explain that there is the potential of another vehicle from the Animal Control. It could be sold or moved to another department. City has also requested that that vehicle be transferred to them if they pick up Animal Control.

Commission Chair Runyon: This has nothing to do with public works? (Mr. Stone) No, Public Works specialty vehicles, while in the vehicle plan do not necessarily fall under the same rules.

{{{Commissioner Holliday made a motion to surplus the 4 named vehicles. Commissioner Hege seconded. Motion passed.}}}

Item #7 Wasco County Sheriff Strategic Plan

Sheriff Magill explained that the Strategic Plan is designed to have semi-annual and annual reports. When they looked at it, he became aware that it was too far away from the budget process to be able to base decision on. In the updated plan, the dates have been removed.

The second issue is the 6 primary goals. The main focus of the plan in those goal areas is financial assistance through the AOC to have a web page and place reporting data on the internet as well as place forms on line to expedite processes. The AOC could not provide funding so some of the report goals were thwarted. In the meantime, they have developed a county newsletter that has gotten very good feedback.

They were putting in a radio tower which was slowed by FCC regulations. The contractor took on the FCC process without additional charge. The tower was put into use starting in February and MDT coverage is now 60% better in southern Wasco County.

They were granted $27,600 in addition funding from Homeland Security Grant Fund to upgrade 911 and mobile data systems. Additional funding was directed to The Dalles Police who will upgrade Sirosis Park for radio antennas. Homeland Security has advised that next year funding will be reduced to $12,000. They looked at upgrading to digital but it is millions of dollars and not feasible. The radio system and communication plan is nearly complete which will give us 12-15 years of longevity.

Patrol division has seen a great increase. We are grateful for the extra 1.5 positions. It has had an impact. It has increased employee morale and increased patrols. They had to release one person during the probationary period and will replace that person by the end of May from a previous list.

With the addition of the 1.5 positions they were able to get someone back on the Mid-Columbia Interagency Narcotics Task Force. That person started on April 2, 2012. The remaining .5 position will be used for the Marine Safety Officer.

They could not afford a new interview room, but will try to work that out next year. They requested a part-time investigator. We had a line item for a person to do

background checks. Looking at the statistics, the need for background checks has significantly diminished. That person can now help with evidence process which frees up the investigator which alleviates the need for the additional part-time investigator. They will be watching to see what the ROI will be with the new arrangement.

Emergency Management has completed a lot of projects. The backup generator is up and running and very reliable. The Hazard Mitigation Plan should be complete by September. The Operations Plan update should be done by month end. They are looking at an outside vendor to provide an Emergency alert system.

The backup radio system at the Juniper Flat radio station is up and running.

911 policy and procedure manual was on a timeline but we found it was much more involved than anticipated. It should be done by year end.

The hard mapping system is obsolete. They will go with electronic system that is more than 50% cheaper and will be accessible in the patrol cars as well as dispatch and search and rescue.

We have not been able to fill the current position for 911 dispatch due to the inability of applicants to pass a background check. They will not request another position until that is resolved.

Two new administrative assistants and two new parole and probation officers have been added to Community corrections.

NORCOR video system for visitation proved to be too costly even though it is a fee based program. They are looking at an outside vendor to do that.

NORCOR is working with ICE and the US Marshalls for the housing of inmates. He fully supports the current plan to open our beds to those agencies to generate revenue. The Oregon Youth Authority is impressed with the program at NORCOR and would like to see it increase which will increase revenue by $200,000 per year.

We are in the process of doing 3 background checks on volunteers which will alleviate some budget issues. The utilization of volunteers will see an ROI of $6,000 - $10,000 per year.

Building a fingerprint cabinet was brought in under budget which means it pays for itself in 6 months rather than one year.

Commission Chair Runyon: Great report. I am very happy about the additional employees.

Sheriff Magill: We are only 4 short of 24/7 full staffing. Deputy Ward graduates the April 24, 2012. Another deputy graduates in June with a third beginning the academy in July.

Mr. Stone: We are very appreciative to Lane for the great work on the plan.

Commissioner Holliday: Is the Marine Deputy doing marine stuff now? (Sheriff Magill) We picked up a deputy from the Seaside Police Department, Gavin Marvel. He is a lateral certified police officer and wanted to move to the marine division. He is currently at the marine academy and starts May 1. He will be working with the rafters in Maupin.

Commissioner Holliday: We will have a meeting on the April18th that we would like to have him at.

Commission Chair Runyon: I would like to recognize that there are two commission candidates who are in attendance. I would also like to say, for the benefit of the press, that Gladys Sherran is 93 today. Gladys was one of the first nurses into Japan after the bomb. There will be a celebration today at OVH.

Commission Chair Runyon adjourned the session at 2:35 p.m.

WASCO COUNTY BOARD
OF COMMISSIONERS

Rod L. Runyon, Chair of Commission

Sherry Holliday, County Commissioner

Scott Hege, County Commissioner

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION / AGENDA WEDNESDAY, APRIL 4, 2012
LOCATION: Wasco County Courthouse, County Courtroom #202
511 Washington Street, The Dalles, Oregon

Public Comment: Individuals wishing to address the Commission on items **not already listed on the Agenda** may do so from 9:00 a.m. - 9:30 a.m. To speak at other times please wait for the current speaker to conclude. Raise your hand to be recognized by the Chair for direction. Speakers are required to give their name and address. Please limit comments to three minutes, unless extended by the Chair.

Departments: Are encouraged to have their issue added to the Agenda in advance. When that is not possible the Commission will attempt to make time to fit you in from 9:00 a.m. - 9:30 a.m. or between listed Agenda items.

NOTE: This Agenda is subject to last minute changes. **Meetings are ADA accessible.** For special accommodations please contact the Commission Office in advance, (541) 506-2520. TDD 1-800-735-2900. Wasco County does not discriminate against individuals with disabilities.

9:00 a.m. **CALL TO ORDER**

"Items below, without a specific time slot may be rearranged in order to make the best possible use of available time"

- Corrections or Additions to the Agenda
- Administrative Officer - Tyler Stone: Comments
- Discussion Items (Items of general Commission discussion, not otherwise listed on the Agenda)
- Consent Agenda (Items of a routine nature: minutes, documents to complete or that have been previously discussed, etc. Removal is also allowed in order to be discussed or voted on.

9:02 a.m. **PGE Cascade Crossing** EFSEC Referral -John Roberts

9:30 a.m. **Continuation of Public Hearing** on Chapter 19 Energy Ordinance

11:00 a.m. **Public Health** Enhanced Interoperability Grant Funding Application – Teri Thalhofer and Kathi Hall

11:30 a.m. **Water Shed/Mosier Power Point Presentation** Kate Conley

12:00 p.m. Lunch

1:00 p.m. **Presentation** – the new Oregon Youth Authority Program at NORCOR

1:30 p.m. **Burn Restriction Ordinance Request -** City of The Dalles Presentation – Julie Krueger

2:00 p.m. **Strategic Plan, Surplus Vehicles, Review** – Lane Magill

NEW / OLD BUSINESS
COMMISSION CALL / REPORTS
ADJOURN

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
APRIL 4, 2012

DISCUSSION LIST

ACTION AND DISCUSSION ITEMS:

1. Discussion on legal counsel for Wasco County

2. Letter to White House Chief of Staff re: U.S. Ninth Circuit Court ruling on logging roads.

ON HOLD:

1. Wasco County website improvement

2. Admin move

Decision Request

To: Wasco County Commission

From: Tyler Stone

Date: 3/30/2012

Re: Legal Services

Background

Wasco County currently uses the District Attorney as in-house County Counsel. The DA regularly reviews documents as to form and content, gives advice on laws and rules, and gives legal opinions for the County Commission among other tasks. Additionally, County Counsel represents Wasco County in legal proceedings when necessary. The DA does not do employment law, land use or union negotiations for Wasco County. Wasco County currently contracts the employment law piece to Bullard Smith Jernstedt Wilson, PC (Bullard). Bullard is an experienced legal firm who counsel clients in the areas of public sector labor law, labor contract negotiations and administration, employment litigation, trials and class actions, employee benefits, employment and noncompetition agreements and proactive employment training and policies and procedures.

With the retirement of Kathy McBride County Counsel Wasco County will see an increase in work load as the legal duties formerly completed by Kathy fall to County Counsel. For many years Kathy has provided essential legal support services to Wasco County. Kathy routinely prepares legal documents that in turn County Counsel approves. Kathy has provided these services at a level comparable to what a paralegal would do for a law firm. This function; which was previously done by Kathy as part of her normal routine, will now fall upon County Counsel unless we are able to hire someone with this skill set and knowledge base.

Current Budget Expenditures

Wasco County currently budgets to spend the following on legal services:

Name	Account	Amount	Description
General Fund - Administration	101.18.5117.52325	$25,000	Outside Labor Counsel
General Fund – Administration	101.18.5117.52406	$4,000	Contracted Services – legal counsel - planning
General Fund – Administration	101.18.5117.51000	$14,565	County Counsel
General Fund – Administration	101.18.5117.51621	$600	Cell phone allowance

General Fund – Administration	101.18.5117.51640	$600	Longevity
General Fund – Administration	101.18.5117.51701	$1971	FICA
General Fund – Administration	101.18.5117.51705	$35	Unemployment
General Fund – Administration	101.18.5117.51721	$3,300	PERS
General Fund – Administration	101.18.5117.51732	$70	LTD
General Fund – Administration	101.18.5117.51733	$27	Life
General Fund – Commission	101.11.5116.51622	$5000	Stipend for Kathy's legal work
TOTAL LEGAL SERVICES		**$55,168.00**	

Alternatives

The Commission can decide to take the following alternatives:

1. Keep services as they are today and try to hire someone that over time will be able to learn how to prepare these legal documents.
2. Hire a paralegal instead of an Executive Assistant to hire the skill set necessary to do the legal work for Wasco County.
3. Hire an in-house attorney to take over all Wasco County legal services and provide legal support during Commission meetings.
4. Retain a legal firm or lawyer to provide legal services to Wasco County on a contract basis.
5. Move all legal duties of the County to the County Council's Office.

Budget Implications

Alternative #1: No hard dollar cost to the County. We will see an efficiency and effectiveness impact on the new Executive Assistant while they learn this function. An additional burden will be placed on County Counsel to produce County legal documents and train the new hire during the training period.

Alternative #2: We expect an increase in personnel expense of $13,338 under this option (not inclusive of benefit costs on the increased amount). Market wage for a paralegal is $50,630 compared to the Executive Assistant wage of $37,292.

Alternative #3: We expect an increase in personnel expense of $42,052 under this option (not inclusive of benefit costs on the increased amount). Market wage for an attorney is $92,220 compared to the $50,168 that we currently spend on legal services. This assumes that an in-house attorney will be able to perform all current legal tasks in-house. Additional value of having in house counsel may be the ability to review and update policies and procedures, advise on employment related issues, and potentially take on a case load for the DA during slow periods. For comparison Crook County; a similar sized county, employs two lawyers and one paralegal to do County legal work.

Alternative #4: Retain an attorney for 2 to 3 days per week at $100 to $300/hr. This scenario would be appealing to many attorneys looking to have a stable base income and still be able to do some private practice. It is also very expensive.

Alternative #5: This option will have an impact on productivity of the DA's office with the increased workload. There is no cost impact.

US Bureau of Labor and Statistics – Legal Occupations for Local Governments

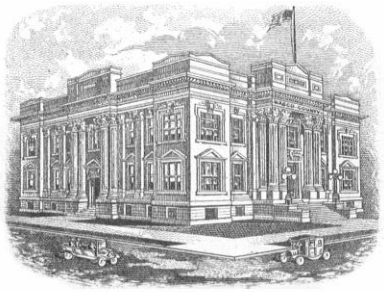
	Title	Employment		Median Hourly	Mean Hourly	Annual
	Paralegals and Legal Assistants	13,300		$22.44	$24.34	$50,630
	Lawyers	50,460		$40.88	$44.34	$92,220

Milliman – Oregon Public Employers Salary Survey - Primarily City Attorneys and large Counties

	Title	Employment		Median Hourly	Mean Hourly	Annual
	Paralegals	73		$26.78	$23.07	$47,986
	General Counsel	14		$69.49	$70.83	$147,326

Milliman – Oregon Public Employers Salary Survey – Primarily City Attorneys and large Counties

	Established Range					
Title	AVG. MIN.		AVG. MIDPT.		AVG. MAX	
Paralegals	$21.98	$45,718	$25.87	$53,809	$29.76	$61,900
General Counsel	$56.21	$116,916	$68.68	$142,854	$81.14	$168,771



WASCO COUNTY

Board of County Commissioners

511 Washington Street, Suite 302
The Dalles, Oregon 97058-2237
(541) 506-2520
Fax: (541) 506-2521

Rod Runyon, *Chair of the Board*
Sherry Holliday, *County Commissioner*
Scott Hege, *County Commissioner*

April 4, 2012

Mr. Jacob Lew
White House Chief of Staff
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. Lew:

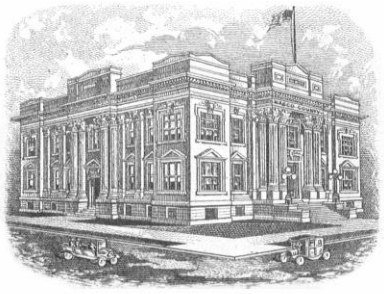
Oregon is home to a massive forestry industry that provides thousands of stable jobs, supplies businesses from construction to furniture, and contributes millions of dollars annually to the state economy. As the Wasco County Commission, we are deeply concerned by a recent judicial ruling that threatens Oregon's forestry industry and what this might mean for the people in my county.

The U.S. Ninth Circuit ruled that forest logging roads are required to obtain National Pollutant Discharge Elimination System (NPDES) permits at each drainage point. The Ninth Circuit decision now classifies forest storm water drainage points with those at factories or power plants and labels them "point sources." For 35 years, the Environmental Protection Agency policy has considered forestry activities nonpoint sources and exempt from NPDES permits. Costs surrounding this judicial ruling will be overwhelming for small and large forest owners alike.

Private forests are a consistent economic engine for Oregon. They directly contribute $4 billion to the GPD, $129 million in taxes, and $11.8 billion in sales each year. With EPA oversight, the Oregon Department of Forestry has worked vigorously for years ensuring that Oregonian's timber operations are equipped with the knowledge and resources to operate sustainable forests under state-determined best management practices (BMPs). A healthy forestry industry is essential to the economic success of both the county we represent and Oregon as a whole.

This ruling does nothing to help Oregon with its already tough protection laws. Securing timber production as an economically sustainable option for the large amount of Oregon forests is essential. This ruling places a much greater burden on the timber industry, subjecting it to more regulation and creating inefficient use of their resources.

Oregon and other defendants have appealed the Ninth Circuit ruling to the Supreme Court, which has requested the Solicitor General give his opinion on whether the Court should review the ruling. We write to respectfully ask that your office contact the Solicitor General and express how damaging the Ninth Circuit ruling is for jobs and state economies, and ask that he recommend it for Supreme Court review.



WASCO COUNTY

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Scott Hege, *County Commissioner*

We would also ask your office to support any legislation that may cross the President's desk that supports existing EPA treatment of forest roads as nonpoint sources. In 2011, a temporary fix was included in the Appropriations Act, but this is not a permanent solution for Oregon jobs and economy. Thank you for supporting Oregon workers and an industry that is vital to our economy and understanding that the Ninth Circuit ruling cannot be upheld.

Sincerely,

_____
Rod Runyon
County Commissioner Chairman

_____
Scott Hege
County Commissioner

_____
Sherry Holliday
County Commissioner

Case No. 07-35266
Date of Decision: August 17, 2010
Panel: William A. Fletcher, Raymond C. Fisher, Charles R. Breyer

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORTHWEST ENVIRONMENTAL DEFENSE CENTER
Plaintiff – Appellant,
v.
MARVIN BROWN, Oregon State Forester, in his official capacity; **STEPHEN HOBBS, BARBARA CRAIG, DIANE SNYDER, LARRY GIUSTINA, CHRIS HEFFERNAN, WILLIAM HUTCHINSON** and **JENNIFER PHILLIPI,** members of the Oregon Board of Forestry, in their official capacities; **HAMPTON TREE FARMS, INC.; STIMSON LUMBER CO.; GEORGIA-PACIFIC WEST LLC;** and **SWANSON GROUP, INC.,**
Defendants – Appellees.

OREGON FOREST INDUSTRIES COUNCIL; AMERICAN FOREST AND PAPER ASSOCIATION; and **TILLAMOOK COUNTY,**
Intervenors – Appellees.

Appeal from the United States District Court, District of Oregon
Case No. 06-1270-KI

BRIEF OF ASSOCATION OF OREGON COUNTIES; IDAHO ASSOCIATION OF COUNTIES; ASSOCIATION OF O & C COUNTIES; DOUGLAS COUNTY and, NATIONAL ASSOCIATION OF COUNTIES IN SUPPORT OF PANEL REHEARING OR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

The Association of Oregon Counties is an intergovernmental agency of county governments established under ORS 190 and has no subsidiary or parent organizations, and has no shareholders.

The Idaho Association of Counties is a non-profit, non-partisan service organization dedicated to the improvement of county government. It was designed and incorporated under 501(c)(4) by county elected officials to provide services, research, uniformity, and coordination among member counties, in order for the county elected officials to serve their constituents better. The Association has no subsidiary or parent organizations. Its members are the 44 Idaho Counties.

The Association of O & C Counties is an unincorporated, voluntary association of the 18 counties in western Oregon that are the beneficiaries of the lands managed by the Bureau of Land Management under the O & C Act of 1937 (43 U.S.C. §1181a *et seq*). The Association has no subsidiary or parent organizations and has no shareholders.

Douglas County is a county government established by the State of Oregon and as such has no subsidiary or parent organizations, and has no shareholders.

The National Association of Counties (NACo) is the national organization that represents county governments in the United States. Founded in 1935,

NACo provides essential services to the nation's 3,068 counties. NACO is a Delaware non- profit corporation and there are no subsidiary or parent organizations and it has no shareholders.

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I. STATEMENT OF THE CASE

Pursuant to Fed. R. App. P. 35 and 40, Defendants-Appellees Marvin Brown, Oregon State Forester, in his official capacity; Stephen Hobbs; Barbara Craig; Diane Snyder; Larry Giustina; William Heffernan; William Hutchison and Jennifer Phillipi (members of the Oregon Board of Forestry, in their official capacities ("hereinafter collectively referenced as "State of Oregon") have petitioned for rehearing or rehearing *en banc* of the panel decision.

Similarly, Defendants-Appellees Hampton Tree Farms, Inc.; Stimson Lumber Co.; Georgia-Pacific West LLC; and, Swanson Group, Inc.; as well as the Intervenors-Appellees Oregon Forest Industries Council; and, American Forest and Paper Association (collectively referenced herein as "Forest Appellees") have also petitioned for rehearing or rehearing *en banc* of the panel decision.

The State of Oregon and Forest Appellees has sought rehearing based upon the Panel overlooking and/or misapprehending critical facts and legal issues. The Defendant-Appellees also request rehearing or rehearing *en banc* based on the Panel's decision subjecting thousands of forest roads to National Pollutant Discharge Elimination System ("NPDES") permitting under the Clean Water Act, 33 U.S.C. 1251 et seq ("CWA") despite the long-standing determinations by the agency implementing the CWA that such roads are not subject to NPDES

permit requirements.

The Association of Oregon Counties, Idaho Association of Counties, Association of O & C Counties, Douglas County, and the National Association of Counties (collectively herein referenced as "Counties"), join in the Defendants-Appellees' motion for rehearing or rehearing *en banc* and have moved to file this brief under Fed. R. App. P. 29 and 9th Cir. R. 29-2, in order to illustrate to this Court the exceptional importance of the question presented and the complexity of the issue created by the Panel's decision. (Fed. R. App. P. 35).

The Panel's decision that stormwater runoff from roads used "primarily for logging" represent discharges required to obtain NPDES permits has swept into the NPDES permitting process not only private roads previously excluded under the silvicultural rule, but also large numbers of public roads.

Rather than repeat the arguments presented in the Defendant-Appellees' motions for rehearing or rehearing *en banc*, the Counties join in their arguments. However, since their briefs do not fully illustrate the complexity and magnitude of the Panel's decision, the Counties discuss below the implications of the decision on the county road systems throughout Oregon as well as other counties within the Ninth Circuit and throughout the United States.

II. DISCUSSION

A. Rehearing by the Panel or En banc rehearing is warranted because the Panel's decision is extremely broad reaching and will result in unwarranted burdens on the Counties.

The decision that NPDES permits are required for the ditches and culverts associated with roads that are "primarily logging roads" has far reaching implications beyond merely the immediate site wherein logging occurs.[1]

Further, while the Panel appears to have assumed that these "primary logging roads" are built and maintained by the logging companies (*See Northwest Environmental Defense Center v. Brown* at p. 12035), it was in error, for large numbers of roads within Oregon that fall within the Panel's definition of "primary logging roads" are owned, built and maintained by the Oregon Counties or the Bureau of Land Management.[2] Similarly, throughout the United States the

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[1] The Panel erred not only in rejecting the silvicultural rule, it also erred in failing to address the stormwater discharges from logging operations in the context of the EPA regulations' focus on the references to "***immediate*** access roads" and to discharges ***directly related*** to manufacturing, processing or raw materials storage areas ***at an industrial plant***."
(40 C.F.R. 122.26(b)(14)(***emphasis*** added).

[2] In response to the Timber Defendants' contention that the logging roads are not "immediate access roads" because they are not confined to the immediate area of the site where the logging takes place, the panel disagreed noting that:

> "[t]he preamble to the Phase I regulations provides that "immediate access roads" means "roads which are exclusively or primarily dedicated for use by the industrial facility."

(*Northwest Environmental Defense Council v. Brown*, at p. 12035). However, the reference to exclusively or primarily dedicated is not particularly helpful in

counties own and maintain roads that fall within the classification of "primary logging roads."

En banc rehearing is warranted in that the Panel's holding that stormwater runoff from primarily logging roads qualifies as Phase I runoff, will displace the existing regulatory framework and, in turn, may establish a new and unprecedented requirement for NPDES permitting for County roads. Further, it is warranted in that the Panel's holding has created the potential for local governments to be subject to CWA liability when their road systems are utilized by private and public entities under the complex system of reciprocal right of way agreements, or when these entities merely exercise their rights as the general public to utilize the county road systems.

If left unchanged, the Panel's opinion would impose an extensive and cost prohibitive permitting and monitoring requirement upon the Counties and other private parties. Local, State and Federal officials will be inundated with an enormous permitting workload in order to obtain NPDES permits for ditches and culverts which have insignificant environmental impacts.

To illustrate the magnitude of the problem created by the Panel decision, the Association of Oregon Counties surveyed the various county Road

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defining what constitutes an "immediate" access road. Under the Panel's interpretation the word "immediate" becomes surplus.

Supervisors in Oregon to determine the number of County roads that would be "primarily logging roads" as that phrase was used in the Panel's decision (*See Northwest Environmental Defense Council v. Brown*, at p. 12035).

The County Road Supervisors identified that within the county road systems there are approximately 4,800 miles of "primary logging roads" and approximately 20,000 cross culverts (culverts that cross under the county road) associated with these "primary logging roads."[3] Not included within this analysis were the culverts that do not cross under these "primary logging roads" but cross connecting side roads or private access driveways. (Declaration of Jon A. Oshel).

In addition to the "primary logging roads" identified by the County Road Supervisors, the Association of O & C Counties identified the number of roads and culverts within the 2.1 million acres managed by the Bureau of Land Management ("BLM") pursuant to the O & C Act of 1937. This analysis identified an additional 16,817 miles of "primary logging roads" along with 500 culverts that are larger than 80 inches in diameter and an additional 40,000 culverts of less than 80 inches in diameter. (Declaration of Kevin Q. Davis).

While a separate NPDES permitting system for the "primary logging roads" does not currently exist, the magnitude of the problem facing the Counties

[3] The "primary logging roads" are a subset of the total county road system within Oregon. (Declaration of Jon A. Oshel).

is evident if one assumes that the same application requirements as are currently required for stormwater discharges associated with industrial activity (*See* 40 C.F.R. 122.26(c) will be imposed for these "primary logging roads."

Under 40 C.F.R. 122.26(c), each culvert and ditch that discharges stormwater will require a NPDES permit application that includes at a minimum: (a) a site map with topography, drainage structures, underground springs (40 C.F.R. 122.26(c)(1)(i)(A)); (b) an estimate of impervious surfaces and the total area drained by each outfall, along with a narrative of the past activities (40 C.F.R. 122.26(c)(1)(i)(B));[4] (c) certifications of testing each of the outfalls for non stormwater discharge (40 C.F.R. 122.26(c)(1)(i)(C)); (d) information regarding significant spills of toxic or hazardous pollutants (40 C.F.R. 122.26(c)(1)(i)(D)); and, (e) sample data collected during storm events from all outfalls (40 C.F.R. 122.26(c)(1)(i)(E).

Based upon the number of miles of "primary logging roads" identified by the various County Road Supervisors, the Association of Oregon Counties' road

[4] The requirement to obtain data on past activities and on surrounding areas within the drainage wherein pesticides, herbicides, soil conditioners and fertilizers may have been applied, imposes an impossible burden on the person applying for a NPDES permit since these activities are undertaken by adjacent landowners or other operators who do not necessarily own or maintain the ditches or culverts. If the applicant is an Oregon County it is being placed in the position of collecting enormous amounts of data from the landowners or operators adjacent to its county road system.

engineer estimated that if all cross culverts and roadway ditches required a NPDES permit, then for the 4,800 miles of "primarily logging roads" and their accompanying culverts under county jurisdiction, there would be a permitting cost to the counties of approximately $56,000,000 (20,000 culverts x 40 hours staff time per permit x $70 per hour = $56,000,000). (Declaration of Jon A. Oshel). This cost will be higher as the "primary logging road" permitting requirement is applied to the forest counties in other States.

Notably, this estimate does not include the required pre-application sampling of each outfall during a stormwater runoff event as required under 40 C.F.R. 122.26(c)(1)(i)(E) which will be a staggering burden in its own right.

The data collection provisions of 40 C.F.R. 122.26(c)(1)(i)(E) require:

> "[q]uantitative data based on samples ***collected during storm events*** and collected in accordance with 122.21 of this part ***from all outfalls*** containing a storm water discharge associated with industrial activity for the following parameters: . . .
>
> (3) Oil and grease, pH, BOD5, COD, TSS, total phosphorous, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;
>
> **
>
> (5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation;
>
> (6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours)."

(***emphasis*** added).

As with the requirement to obtain data as to the land practices in the drainage of the culvert or ditch, to obtain this storm event data for each ditch outfall along the 4,800 miles of "primary logging roads" as well as for the accompanying 20,000 cross culverts imposes a staggering burden on the Oregon Counties.[5] Similarly, to obtain the data for the Bureau of Land Management's 16,817 miles of roads and 40,500 culverts is equally staggering.

Further illustrating the complexity of the issue, is the unique checkerboard of intermingled private and public land ownerships and the accompanying reciprocal road right of ways between the various land owners. Access across this checkerboard is provided through reciprocal right of way agreements that provide the United States and the private landowners with the right to use and construct logging roads on each other's property. These "primary logging roads" are not under one single party's control and often involve numerous parties utilizing the same road concurrently. Contrary to the Panel's assumption that these "primary logging roads" are built and maintained by the logging companies, such is not the case for there are hundreds, perhaps thousands, of intermingled private owners within the O & C checkerboard, all of whom share

[5] The magnitude and impossibility of the permit application process clearly underscores the State of Oregon's argument that a court cannot simply excise one portion of a rule and treat the balance of the rule as independently operative. (*See* State of Oregon Brief, Dkt Entry 89, pp 21-23 of 67).

the same interconnecting system of "primary logging roads."

The Panel has miscomprehended the nature of the road system that is utilized for log haul purposes. Left in its present state, the Panel's decision to treat "primary logging roads" as access to industrial facilities creates a significant and unwarranted burden on the Counties.

III. Conclusion

Rehearing by the Panel or *En banc* rehearing of the Panel's decision is warranted in that it sets aside a long standing regulatory scheme and adopts a new and expansive definition of immediate access roads. The definition ignores the nature of the logging road network and its intertwined nature of public and private road systems. Left unchanged the Counties face increased costs, litigation risks and uncertainty in the operation of the public roads. In addition, if the Panel decision is left unchanged, the Bureau of Land Management will similarly face additional costs and uncertainty in meeting its obligations to the O & C Counties. For these reasons, rehearing or *en banc* rehearing is warranted.

Dated: October 15, 2010.

Respectfully submitted,
/s/ Ronald S. Yockim
Ronald S. Yockim, OSB #81430
Attorney for the Association of Oregon Counties; Idaho Association of Counties; Association of O & C Counties, Douglas County and National Association of Counties

CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

The undersigned certifies, pursuant to Circuit Rules 35-4 and 40-1 that:

1. This brief complies with the type-volume limitation of 9th Cir. R-29-2 because:

this brief contains 2,866 number of words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using Word version 97-2003, in New Type Roman 14 font size.

/s/Ronald S. Yockim
Ronald S. Yockim, OSB #81430
Attorney for Association of Oregon Counties; Idaho Association of Counties, Association of O & C Counties; Douglas County and, National Association of Counties

Dated: October 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2010, I electronically filed the foregoing Brief of Association of Oregon Counties; Idaho Association of Counties, Association of O & C County; Douglas County and National Association of Counties in Support of Panel Rehearing or Rehearing *En Banc* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I further certify that all participants in this case are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid to the following non-CM/ECF participants:

Marcia Berman
Sheila M. Lieber
U.S. Department of Justice
20 Massachusetts Avenue N.W.
Washington, DC 20530

s/ Ronald S.Yockim

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NPDES Permits for Forest Roads

OTHER RESOURCES

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Working Forests Support Jobs, Water Quality, and Conservation

Nonpoint Source Regulatory Exemption. Since 1976, EPA regulations have interpreted the Clean Water Act (CWA) to define forest management activities such as forest roads as "nonpoint" sources that do not require NPDES permits under the CWA. The U.S. Court of Appeals for the Ninth Circuit has now ruled that EPA's definition is contrary to the CWA and that forest roads and their associated stormwater runoff gathering systems are "point sources" subject to the National Pollution Discharge Elimination (NPDES) permit programs. The decision means that forest landowners will have to obtain NPDES permits for some or all of their roads. EPA has shown no indication that it will defend its regulations any further. It statements to date suggest that the agency is did not support rehearing the original decision, which the court has now denied, and its statements to date suggest it is developing a nationwide response despite the ongoing judicial process. It appears that the agency is inclined to abandon its prior 35 years of enforcement and follow the decision beyond the Ninth Circuit if it becomes final.

Timeline

1976 – Silviculture Nonpoint Definition
1990 – Stormwater Industrial Activity Definition
2010 Ninth Circuit Strikes Down Definitions

Nonpoint Source Water Quality Protection. Forestry activities in the United States are conducted under the most comprehensive program of best management practices (BMPs) of any land use activity for protection of water quality. The content and use of BMPs are subject to both periodic review and continuous improvement. Studies have shown that state BMP's are effective at controlling runoff.

Today, the greatest threat of deforestation comes from the conversion of forests to non-forest uses that produce a higher economic value. Private forests make up nearly 60% of our nation's forests and over 10 million individuals and small businesses own nearly 60% of that total. Forest owners depend on a return from forest products to invest in sound, long-term forest management. However, increased regulatory costs reduce the ability to maintain the land as forested and at some point will tip the balance in favor of the non-forest use.

New requirements under an NPDES permit for monitoring and surveillance, planning, recordkeeping, reporting and other tasks will create significant delays, costs, reporting burdens and legal risks from citizen suits for hundreds of thousands of permit holders without enhancing environmental protections.

The Litigation. The Northwest Environmental Defense Center (NEDC) sued the Oregon State Forester, the Oregon Board of Forestry, and four timber purchasers in *NEDC v. Brown* alleging that "logging" roads in the Tillamook State Forest are "point sources" requiring NPDES permits. On August 17, 2010, the U.S. Court of Appeals for the Ninth Circuit determined that forest roads and their stormwater runoff gathering systems channel stormwater into waters of the United States and are therefore point sources subject to the NPDES permit requirement. The court ruled that ditches and culverts such as used on forest road systems are within the definition of point source in the CWA, and, therefore, EPA lacked authority to designate these roads a nonpoint source in 1976. In so doing, the Ninth Circuit reversed the U.S. District Court for the District of Oregon which had upheld the EPA regulation.

The Ninth Circuit further ruled that EPA included logging and associated roads within its definition of "industrial activities" subject to Phase I of the stormwater NPDES permit program. Congress specified that Phase I activities must obtain an NPDES permit for stormwater discharges. The court ignored the fact that EPA specifically excluded silviculture activities from its final definition of "industrial activity," as the agency explained in its amicus brief in the case. EPA argued in its amicus brief that its exclusion of forestry from the definition of "industrial activity" means that forest roads are only subject to the discretionary Phase II of the stormwater program where Congress left it up to EPA to decide what additional point sources would require permits.

FORESTRY JOURNAL

NAFO's recommendations respond to the Biogenic Carbon Emissions Panel's draft recommendations on EPA's accounting framework for carbon emissions. More

A new report provides a concise primer to policy makers on the forest carbon cycle, carbon accounting, biomass energy emissions and other critical topics. More

New federal legislation will help timberland owners avoid costly permit fees for logging roads, U.S. Reps. Jaime Herrera Beutler and Kurt Schrader announced Monday. Under the new provision, a 35-year-old U.S. Environmental Protection Agency policy would be extended for another year. It would shield timber companies from the cost of designing stormwater control systems for logging roads under the federal Clean Water Act. Landowners will not be required to get federal permits to build logging roads. More

See All

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The defendants requested rehearing "*en banc*," arguing that the court cannot ignore EPA's own interpretation of its stormwater regulations on the meaning of "industrial activity." On May 17, 2011, the Court denied the request. Despite filing an *amicus* brief defending its regulations during the original appeal, EPA has taken no steps to defend its regulations during the rehearing process. Rather, as noted above, the agency seems to have accepted the decision and is considering ways it might be implemented. The defendants now have 90 days to ask the Supreme Court to review the decision. They may also ask the Ninth Circuit to stay its ruling while the Supreme Court review is sought.

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Protecting the environment by providing legal services for forest cases of statewide significance.

Northwest Environmental Defense Center v. Brown

In a landmark decision issued August 17, 2010, the Ninth Circuit Court of Appeals ruled that polluted stormwater generated by logging roads is subject to regulation under the Clean Water Act's National Pollutant Discharge Elimination System.

COURT INFORMATION: U.S. Court of Appeals for the Ninth Circuit, No. 07-35266; U.S. District Court of Oregon, No. 06-1270

CLIENT: Northwest Environmental Defense Center (NEDC)

DEFENDANTS: Marvin Brown, Oregon State Forester; Stephen Hobbs, Barbara Craig, Diane Snyder, Larry Giustina, Chris Heffernan, William Hutchinson, and Jennifer Phillippi, members of the Oregon Board of Forestry; Hampton Tree Farms, Inc.; Stimson Lumber Company; Georgia-Pacific West, Inc.; and Swanson Group, Inc.

DEFENDANT-INTERVENORS: Oregon Forest Industries Council; American Forest and Paper Association; and Tillamook County

STATUS: In a unanimous opinion issued August 17, 2010, the Ninth Circuit Court of Appeals ruled that polluted run-off from logging roads is subject to regulation under the Clean Water Act. Learn more about this landmark decision here. On May 17, 2011 the U.S. Court of Appeals for the Ninth Circuit issued an order and opinion denying the petitions for rehearing and rehearing en banc. In mid-September 2011, both the timber industry and the State of Oregon filed petitions for certiorari requesting that the Supreme Court review the case. Opposition brief papers are due in mid-November.

LEGAL ISSUE: NEDC alleges that the defendants are discharging polluted industrial stormwater from pipes, ditches, and channels along logging roads in the Tillamook State Forest, and that those discharges are unlawful because they are not authorized by Clean Water Act NPDES permits.

CASE UPDATE:

On May 17, 2011 the U.S. Court of Appeals for the Ninth Circuit issued an order and opinion denying the petitions for rehearing and rehearing *en banc* in Northwest Environmental Defense Center v. Brown, et al. The Court denied the defendants' requests to reconsider its August 2010 decision requiring Clean Water Act permits for stormwater runoff from logging roads. WFLC attorney Paul Kampmeier said the decision is "great news for our wild fish populations."

On October 5, 2010, the defendant-appellees filed petitions for rehearing and rehearing en banc. The petitions ask the Court to reconsider its August 17, 2010 ruling that discharges of polluted stormwater from logging roads are subject to EPA's Phase I stormwater rule. Read the petitions here and here. NEDC responded to the petitions on December 13, 2010. Read the response here.

Additionally, on October 24 and 25, 2010, twenty organizations asked the Court of Appeals to accept four different amicus briefs in support of the petitions for rehearing and rehearing en banc.

Read the brief of the American Forest Resource Council.

Read the brief of the Association of Oregon Counties, et al.

Read the brief of the American Loggers Council, et al.

Read the brief of the Mountain States Legal Foundation.

Learn more about this landmark decision here.

CASE DETAILS:

At least seventy percent of the Earth is covered in water. Whether in fresh or salt form, water is vital to an innumerable number of species. Ensuring clean water is essential to ensuring the survival of these species as well as the balance of the biotic community.

Oregon's Logging Roads

You might think of forests as having crystal-clear streams but, sadly, that is not always true. In fact, the private and state forests of the Pacific Northwest are criss-crossed by thousands of miles of forests roads. Many of these roads were built years ago, built cheaply, are heavily traveled by logging trucks, and fall well below today's standards. Many collect Pacific Northwest storm water (of which there is a lot!) and dump that water directly into forest streams. Over the years, this sediment builds up and may destroy critical fish habitat or pollute drinking water sources. Oregon newspapers have covered this issue (read the January 28, 2007 Statesman Journal article, "*Effect of logging incident on city's drinking water spotlights forest rules*"). In fact, in its *2000 National Water Quality Inventory*, EPA listed forestry-related sediment as the fifth leading source of water quality impairment to rivers and streams nationwide.

Unfortunately, Oregon's state rules governing forest practices have very weak road construction, maintenance, and road-abandonment standards. In Washington, forest landowners at least have to develop and implement road maintenance and abandonment plans by 2015. In Oregon, there is no comparable law. The politically muscular timber industry has repeatedly opposed measures to clean-up forest roads.

Case Facts:

That is why WFLC has teamed up with Oregon environmental organizations in federal court to compel Oregon to take action to protect forest streams now. On September 1, 2006, in the U.S. District Court for the District of Oregon, WFLC and the CRAG Law Center filed a Clean Water Act citizen suit on behalf of the Northwest Environmental Defense Center (NEDC), alleging that four timber companies, the Oregon State Forester, and the members of the Oregon Board of Forestry are violating the Act by discharging pollutants and/or industrial stormwater to the South Fork Trask River and the Little South Fork of the Kilchis River from ditches, pipes, and culverts along two logging roads in the Tillamook State Forest (the Trask River Road and Sam Downs Road).

The Clean Water Act generally prohibits the addition of pollutants from point sources to waters of the United States unless authorized by and in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. A "point source" is any discernable confined and discrete conveyance like a pipe, ditch, or channel from which pollutants are discharged. Congress enacted the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985.

Logging Road Discharges

Like many logging roads in Oregon State Forests, the Trask River Road and Sam Downs Road were designed and constructed to collect and deliver storm water to nearby rivers and streams. Indeed, NEDC documented numerous discharges of Total Suspended Solids, some more than 2000 times background levels, from six "point sources" along a one-mile stretch of the Trask River Road and from five "point sources" on the Sam Downs Road.

Storm water being delivered to the South Fork Trask River from the Trask River Road. Photo courtesy of Chris Winter.

These discharges are neither trivial nor harmless. The Oregon Department of Forestry found that 39% of the road system in the Kilchis River watershed was clearly or possibly delivering sediment to streams from 459 different discharge points. And the Tillamook Bay National Estuary Project found an elevated risk of erosion in the South Fork Trask watershed given the high density of roads there. The Tillamook Bay National Estuary Project also notes that sediment delivered to streams can adversely affect fish by smothering salmonid eggs, reducing oxygen levels, interfering with sight-feeding, and burying the macroinvertebrate insects that provide food for fish.

NEDC alleges that the discharges of polluted stormwater from these two roads are illegal because they are not authorized by NPDES permits. NEDC alleges the Oregon Department of Forestry and the Oregon Board of Forestry are responsible for the discharges because they own or control logging roads in Oregon State Forests. Additionally, NEDC alleges the four timber companies are responsible for the discharges because they haul timber on the roads—an industrial activity that grinds up the road surface and creates much of the sediment and other pollutants delivered to rivers and streams—and because their timber sale contracts with the Oregon Department of Forestry obligate them to maintain the roads on which they haul.

In March 2007 the district court dismissed NEDC's claims, finding that the road/ditch/culvert system was not a "point source" that required NPDES permit coverage. NEDC appealed that ruling to the U.S. Court of Appeals for the Ninth Circuit, which issued a unanimous opinion on August 17, 2010 that polluted run-off from logging roads is subject to regulation under the Clean Water Act.

Media

Read the August 17, 2010, Seattle Times article, "Appeals court: mud from logging roads is pollution"

Read the August 17, 2010, Oregon Public Broadcasting article, "Logging road runoff decision could have big implications in Northwest"

Read the June 22, 2006, Oregonian article, "Suit to attack logging roads' dirty water"

For additional case information, please contact staff attorney Paul Kampmeier at (206) 223-4088 x 4 or pkampmeier at wflc.org.

WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
APRIL 4, 2012

CONSENT AGENDA

1. Approval of Title III (amended)

PL 106-393 Title III Project Submission Form For Wasco County

"Secure Rural Schools and Community Self-Determination Act of 2000"

Name of Project: Wasco County Youth Services Community Work Program

Date Project Submission Form To Be Returned To Wasco County Court: July 16, 2007

Date Project Submitted: May 20, 2009

Project Sponsor: Wasco County Youth Services
Sponsor's Address: 202 East Fifth Street, The Dalles, OR 97058
Contact Person: Molly Rogers
Phone: (541) 506-2660 Fax: (541) 506-2661 E-Mail: mollyr@co.wasco.or

Project Is Authorized Under The Following Category: (see Sec. 302(b), attached)

- ☐ Search, Rescue and Emergency Services
- ☐ Community Service Work Camps
- ☐ Easement Purchases
- ☐ Forest Related Education Opportunities
- ☐ Fire Prevention And County Planning
- X Community Forestry

Project Location: Mount Hood National Forest / Wasco County

Other Identifiers: (geographic location, road name or number, stream name)

Project Description:
Wasco County Community Work Service Crew operates four days a week with one County Employee supervising up to 8 adults or youth who are required to complete community work service as part of a supervision plan. Crews leave at approximately 8:30 a.m. and provide work for the National Forest, and other entities as contracts allow. The program is based on the restorative justice model for rehabilitation and community restoration. More than 1600 hours of work is completed each year.

*include work windows or other limitations / restrictions / public or private land

Project Goals and Objectives:
The goals of the program are to educate adult and youth offenders about the value of natural resources and the importance of giving to the community that they victimized through their criminal behavior. Through the partnership the goals are to complete projects agreed upon by the Barlow Ranger District and reduce re-offense rate of the offender population.

Is There An Opportunity To Tie To An Associated Title II Project? Explain:
No -- It was in cooperation with Title II 2005-2006.

Proposed Method Of Accomplishment:
[ ] Contract [ ] Volunteers [ ] Agency (FS/BLM) Employees [X] County

[X] County Corrections (adult / juvenile) [ ] Non-Profit

[ ] Other

Current Status Of Project Preparation:
Currently active with .8FTE – Continuation Request

Contact Person(s) For Project Specific Documentation:
Molly Rogers, (541) 506-2660 and/or John "Jack" Bisset, (541) 506-2660

Telephone Number(s) For Contact(s) (541) 506-2660

Does Project Meet The Purpose Of The Legislation? (see Sec. 302(b), attached)
Explanation: Education for youth and adults on work crew as they work in the National Forest or on Natural Resource Projects within Wasco County and the Mt. Hood National Forest.

How Does The Project Benefit The Community? Community Work Service is a part of the Balance and Restorative Justice model when working with youth and adult offenders. It allows the community to appreciate the work completed by the offenders. Previous projects have included trail maintenance, forest re-planting, recovery of damaged areas and a fire wood project.

How Does The Project Improve Cooperative Relationships Among People That Use Federal Lands And Federal Management Agency? General maintenance, non-intrusive practices, positive interaction with agency and community.

Duration Of The Project: July 1, 2009 through June 30, 2013
Anticipated Cost of Project (itemize):

- Review And Consultation Costs:
- Engineering Costs:
- Contract Preparation And Administration Costs:
- Materials And Supplies: $6,500.00 per year = $26,000 Total
- Monitoring:
- Other Costs: Personnel: Work Crew Supervisor ($47,502.24 & $49,877.35 & 52,371.,22 & 54,989.78 = $204,749.59)
- Indirect Costs (overhead):

TOTAL COST ESTIMATE: $ 204,749.59

Estimated Start Date Of Project: 07/1/2009
Estimated Completion Date of Project: 06/30/2013

Is This A Multi-Year Funding Request? [X] Yes [ ] No (if yes, display by fiscal year)

FY02 Request: _____ FY03 Request: _____ FY04 Request: _____
FY05 Request: _____ FY06 Request: $ 25,000 (200-2010) $27,000 (2010-2011) $29,000 (2011-2012); $31,000 (2012-2013) = Total $112,000

Identify Source(s) Of Other Funding For Project: Oregon Department of Transportation, - ($5,000 per year based on projects); City of The Dalles ($13,650 for Fiscal year 2009-2010 & projected $13,650.00 Fiscal year 2010-2011 & $14,332 projected for fiscal year 2011-2012 & 2012-2013)

Project Accomplishments / Expected Outcomes: SEE ATTACHED: Continue to provide Community Work Crew to accomplish projects identified in cooperation with the Forest Service. Increase the number of hours completed by youth offenders on supervised projects.

How Is Project In The Public Interest? Increased accountability for youthful offenders while teaching them skills and ownership in the community and national forests. Leverages funds through additional partnerships to accomplish the common goals of maintaining healthy and safe National Forests and communities.

Will Project Create a Product Or Benefit To The Federal Resource? No

Monitoring and Reporting Plan To Measure Outcome (what measure or evaluation will be made to determine how well the proposed project meets the desired objectives): Number of hours completed by adult and youth offenders will be tracked and reported.

Other Comments: _____

Submitted To Wasco County By: Molly Rogers, Director, Wasco County Youth Services

Address: 202 East Fifth Street, The Dalles, OR 97058
Telephone: (541) 506-2660

Date: May 26, 2009

PROJECT WORK PLAN

List the tasks and the time frame. Name individual(s), consultant(s), and organization(s) responsible.

Tasks	Time Frame -- Dates	Responsible Party/Name
Community Work Service Projects in the Mt. Hood National Forest	July 2009-2013	Wasco County Youth Services Community Work Supervisor Jack Bisset
Community Work Service Project with Education component at the Discovery Center Site – An Educational facility staffed with Forest Service Employees	Summer 2009 Spring/Summer 2010 Spring/Summer 2011 Spring/Summer 2012 Spring 2013	Wasco County Youth Services Community Work Supervisor Jack Bisset

Wasco County Board of Commissioners
Staff Report
PLALEG-09-06-0003

Amendments to the
Wasco County Land Use & Development Ordinance

Note: This staff report has been written to address ONLY the amendments to the Wasco County Land Use and Development Ordinance, NOT the amendments to the Wasco County Comprehensive Plan. The amendments to the comprehensive plan were approved by the Board of Commissioners on January 4, 2012. The staff report was prepared for the April 4th public hearing and addresses issues raised at the March 20th and February 15, 2012 public hearings.

More information available at: http://co.wasco.or.us/planning/Energy_updates_Main.html

Date:	Prepared for April 4, 2012 Public Hearing (Continued from March 20, 2012 Public Hearing)
Request:	Amend the Wasco County Land Use and Development Ordinance (LUDO) 1. Amend language related to where and how commercial and non-commercial energy development is allowed. 2. Modernize language that is not compliant with state law, incorrect, or out of date. 3. Reformat all zones and add similar uses to create as much consistency between the zones as possible.
Prepared by:	John Roberts, Planning Director Jeanette Montour, Senior Planner
Prepared for:	Wasco County Board of Commissioners
Applicant:	Wasco County
Planning Commission Hearing Dates:	May 3, 2011 and June 7, 2011
Board of Commissioner Hearing Dates:	February 15, 2012 and March 20, 2012
PC Recommendations:	LUDO: On a vote of 7 – 0 the planning commission recommended the Board of Commissioners adopt the proposed amendments as presented at the 7 June 2011 hearing and further amended during deliberation.

Applicable Properties: All properties in Wasco County outside of the National Scenic Area and outside of urban growth areas.

Procedure Type: Legislative

Attachments

- Attachment A – Clean Version of Chapter 19
- Wasco County Land Use and Development Ordinance Amendments, Final Draft, April 4, 2012
- Draft Ordinance

I. BACKGROUND

The first Board of Commissioner public hearing on the proposed amendments to the Wasco County Land Use and Development Ordinance (LUDO) was held at the Northern Wasco PUD on February 15, 2012. The amendments focus on Chapter 19 (Energy Facilities & Related Uses). The hearing was well attended and many comments were solicited through both written and public testimony. The public hearing was continued to March 20, 2012.

An Open House has hosted on March 20th from 8:00 a.m. to 9:00 a.m. (just before the scheduled 9:00 a.m. hearing) on the third floor of the county courthouse. The Open House was organized in response to public comments and feedback received and recognizing the need to be accessible to the public. The Open House was well attended and planning staff was available to:

- Explain how the proposed setback regulations would affect properties in each zoning district differently (i.e., differences between non-resource and resource lands).
- Illustrate proposed setbacks with maps and visuals.
- Provide explanations and answers to all related issues and concerns.

At the March 20 public hearing considerable written and public testimony was received. After deliberation the Board of Commissioners closed oral testimony, but left open the ability to continue to submit written testimony before the next public hearing. The commissioners continued the hearing to April 4, 2012 (9:30 a.m. Wasco County Court House, Room 202).

II. ADDITIONAL SUGGESTED CHANGES TO CHAPTER 19

The following breaks down additional changes to proposed by staff to the draft LUDO amendments (Chapter 19) and are primarily in response to comments received before or at the March 20th public hearing. These changes have been incorporated into Attachment A as well as the attachment titled "Land Use and Development Ordinance Amendments, Final Draft, April 4, 2012." These proposed changes are identified through Track Changes: ~~strikethrough~~ and underline below and are accompanied by staff comments addressing the respective issues.

Examples of Proposed "Non-Substantive" Changes Made to Chapter 19:

- Changed the header of Section 19.020.B.2.a.2 from "Safety to "Blade Reach."
- In Section 19.030.C.4.c. Additional Visual Mitigation Impacts for all Facilities – changed a cross-reference from (a) above to "(b)" above.

It is felt it is not necessary to provide details on these changes as they were intended to provide additional clarity and did not change the intent of any specific provisions.

Substantive Changes Proposed to Chapter 19:

- Section 19.020.B(2)C(2) – Lighting:

  Lighting of towers shall be evaluated on a case-by-case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.

  Staff Comment: There were multiple concerns about lighting at night submitted. The suggested changes to the lighting language are intended to address an evolving technology (i.e., radar triggered lighting) and to the extent practicable allow flexibility to find a reasonable solution to minimizing light pollution. Evidence would suggest there is a lack of consistency or certainty in how the FAA currently approves radar triggered lighting. These changes are also applicable to Section 19.030(D)(1)(A)(3) – Visual Impact.

- Section 19.030(B)(3), Non-Resource Zone Standards for Related or Supporting Facilities

  3. Related or Supporting Facilities (Reasonable Alternatives Analysis) - Related or supporting facilities to a commercial power generating facility may be allowed in non-resource zones subject to Conditional Use Review upon a showing that such related or supporting facilities are necessary for siting the commercial power generating facility. To the extent practicable, a~~A~~ny related or supporting facilities must be consistent in size, scale, and impact as other existing or allowed uses in the non-resource zone. Related or Supporting Facilities shall be reviewed as part of the Commercial Power Generating Facility and not subject to a separate Conditional Use Review. To demonstrate the related or supporting facilities are necessary within the meaning of this section, an applicant must show that reasonable alternatives have been considered and that the related or supporting facilities must be sited in a non-resource zone after considering the following factors:

  Staff Comment: The intent of this suggested change to allow a degree of flexibility in how other existing or allowed uses in the non-resource zones would be evaluated. Evaluation utility facilities to other existing or allowed uses might not be conducive for an 'apples to apples' comparison.

- Section 19.030.C.10 – Road Use Agreement

  Where applicable, the Wasco County Road Department shall require the applicant to enter into a Road Use Agreement with the County to ensure that project construction traffic is

mitigated and any damage to county roads that is caused by the construction of the energy facility or its related or supporting facilities is repaired by the applicant, and such county roads are restored to pre-construction conditions or better (this includes a weed plan and providing for re-vegetation).

- General design standards for roads, shall, in general, conform to policies set forth in Chapter 21.
- As part of the Road Use Agreement the applicant shall also obtain a utility permit for all project utility installation and approach permits for road approach access to county roads.

Staff Comment: These suggested changes to the road use agreement section attempt to clarify other related provisions contained in the LUDO that would need to be addressed and other permit types required by the state at the discretion of the Wasco County Road Department.

- Section 19.030(C)(19) - Termination and Decommissioning.

a. ~~Through the approval process t~~The applicant shall prepare a decommissioning plan that describes the actions 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.

b. ~~As part of the decommissioning plan t~~The applicant shall provide a detailed cost estimate, a comparison of that estimate with funds to be set aside, in the form of a financial assurance (bond, letter of credit, insurance policy or other such form of guarantee acceptable to Wasco County), and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate and financial assurance may take into account salvage value associated with the project, and can be requested for review and update by Wasco County at their discretion (e.g., every 5 years).

c.3 The amount of the financial assurance ~~(bond or other such form of guarantee)~~ shall be annually adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"). The permit holder (including possible successor if sold or transferred) shall increase the amount of the financial assurance annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the Index is no longer published, Wasco County shall select a comparable index for adjusting the amount. The amount of the financial assurance shall be prorated within the year to the date of decommissioning.

Staff Comment: The suggested changes were made to address comments that suggested some the proposed language in this section was possibly premature or limiting. Overall, it is felt the section ensures that as part of an application a decommissioning plan: will be required or a necessary condition of approval, allows specifics to be negotiated, flexibility, unforeseen circumstances to be addressed, and can be modified as necessary.

- Section 19.030(D)(1)(c) - Setbacks

  Staff Comment: Throughout the process setbacks have been an important topic for all parties. The goal is to find setbacks that provide certainty for developers while at the same time ensuring responsible and safe wind energy development. For example, addressing participating landowner comments (i.e., south county residents) while also offering protection to non-participating landowners (i.e., seven mile residents).

  As such the proposed changes to the setbacks for resource zone dwellings attempt to create a distinction between participating and non-participating landowners in the "energy facilities project area". The setback for participating landowners, with the project area, would be ¼ mile. The setback for non-participating landowners, outside the project area, would be 2/3 of a mile. Per the proposed amendments, the definition of Energy Facility Project Area is:

  > "The proposed location of an energy facility and all of its related and supporting facilities as well as lands within the project lease boundary but outside the area of the primary development where there could be negative physical consequences as a result of the project such as soil compaction or erosion."

  The recommended revisions to allow for an adjustment (i.e., waiver) to the resource dwelling setback is considered to address concerns recently raised by the Land Use Board of Appeals. Although if a ¼ mile setback was adopted the need for an adjustment would probably be significantly curtailed.

  Additionally, it was felt clarity was needed with non-resource zoned boundaries setbacks. Specifically, language was inserted to clarify the "adjustment provision" does not apply to non-resource zone lands and a 1 mile setback on city limits or lands within a UGB or urban reserve cannot be imposed.

  - Section 19.030.D – Setbacks

    (1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

    (2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

    An applicant may request an adjustment to non-project boundaries described in (3)(C) below. ~~above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A). As part of the permitting process the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The permission from abutting property owners, road authority, or utility.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~
~~(c) Site specific conditions.~~
~~(d) Minimizing conflicts with existing infrastructure.~~
~~(e) Avoiding or minimizing potential environmental or resource impacts.~~

Wind turbines shall ~~still be required to~~ meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings ~~- Wind turbines shall be setback from all approved resource zone dwellings a minimum of 2/3 mile (3,520 feet), measured from the center line of the turbine tower to the edge of the dwelling or the distance required to comply with the DEQ noise standard (OAR 340-035-0035) in Subsection D(3) above, whichever is greater unless a noise easement is obtained under OAR 340-035-0035.~~

a. Participating Landowners: For owners of legal resource dwellings who are also landowners in the Energy Facility Project Area, wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction; provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

b. Non-Participating Landowners: For owners of legal resource dwellings who are not landowners in the Energy Facility Project Area, wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

c. Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be ~~applicant may request an adjustment to the resource dwelling setback described above without being subject to the variance processes in Chapters 6 or 7 and~~ authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee.

As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon findings that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to~~

(1~~a~~) Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility. ~~The property owner's support or consent of a lesser setback.~~

~~(2b)~~ The proposed adjustment does not establish a setback in conflict with the DEQ noise standard. ~~Applicant's ability to comply with DEQ noise regulations.~~

(3~~c~~) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use. ~~Site specific conditions of the site.~~

(4~~d~~) The proposed adjustment will not unduly burden existing infrastructure. ~~Avoiding or minimizing potential environmental or resource impacts.~~

(5) The proposed adjustment will not unduly impair safety in the area.

(6) The proposed adjustment will minimize impacts to environmental resources.

(4) Non-Resource Zone Boundaries - Wind turbines shall be setback:

(a) A minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of urban growth boundaries and urban reserves (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these properties. ~~(The adjustment provision does not apply to non-resource zoned propert .~~

(b) 3/4 mile (3,960 feet) from the established city limit or~~,~~ urban growth boundary or urban reserve boundary of an~~y~~ incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision~~; or~~

(c) The distance required to meet the DEQ noise standard (OAR 340-035-0035) ~~in Subsection D(3) above, whichever is greater~~ unless a noise easement is obtained under OAR 340-035-0035.

(d) Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be ~~applicant may request an adjustment to the non-resource boundary setback in subsection (b) (c) above without being subject to the variance processes in Chapters 6 or 7 and~~ authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee.

As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in non-resource zones may be authorized by upon findings that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The property owner's or local jurisdiction's support or consent of a lesser setback.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~

~~(c) Site specific conditions of the site.~~
~~(d) Avoiding or minimizing potential environmental or resource impacts.~~
(1) Written Consent:
  i Proposal for administrative adjustment relating to incorporated cities shall include written authorization from appropriate city authority.
  ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different from city limits) shall include written consent from all owners directly impacted by the proposed adjustment.
(2) The proposed adjustment does not establish a setback that is in conflict with the DEQ noise standard.
(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
(4) The proposed adjustment will not unduly burden existing infrastructure.
(5) The proposed adjustment will not unduly impair safety in the area.
(6) The proposed adjustment will minimize impacts to environmental resources.

III. OTHER

Staff is will elaborate on the above suggestions and changes at the public hearing. Additionally, staff will be available to expand or provide clarity on any of the proposed amendments or issues resulting from public testimony.

IV. OPTIONS & RECOMMENDATIONS

The Board of Commissioners has three options to consider and is as follows:

1) Continue Public Hearing: If the Board of Commissioners need more time to take more written public testimony, address issues or explore options, Planning Case PLALEG 09-06-0003 should be continued to a date, place and time certain for additional information necessary to make a decision (and if necessary, direct staff to provide additional information).

2) Adopt Proposed Regulations: If the Board of Commissioners are ready to adopt the proposed regulations, the Board can approve the proposed amendments to Chapters 1, 2, 3, 4, 15 and 19 of the Wasco County LUDO as: contained in the attachment titled "Wasco County Land Use and Development Amendments", Final Draft, dated April 4, 2012; in light of the applicable criteria and findings presented in the staff report to the Board dated February 15, 2012; with additional amendments from staff as presented; as well as any additional amendments made by the Board (Note: additional amendments made by the Board must be specifically worded). With this approval the Board shall also grant staff the authority to make non-substantive changes throughout the documents to ensure consistency.

3) Deny the amendments as proposed

ATTACHMENT A
CLEAN VERSION OF CHAPTER 19

WASCO COUNTY LAND USE & DEVELOPMENT CODE
CHAPTER 19 AMENDMENTS

STANDARDS FOR NON COMMIERCIAL ENERGY FACILITIES, COMMERCIAL ENERGY FACILITIES & RELATED USES

SECTION 19.010 Purposes

This chapter describes the requirements for establishing non-commercial energy facilities, commercial energy facilities and related uses (as included) in Wasco County. The goals of this chapter are to:

- Encourage renewable energy production;
- Utilize clear and objective standards;
- Establish a clear, consistent and accountable application process;
- Collaborate and coordinate with agencies and other stakeholders;
- Minimize conflict with other permitted uses through compatibility review;
- Protect resources identified in the Wasco County Comprehensive Plan; and
- Protect the public health, safety and general welfare of the citizens of Wasco County.

The uses described in this chapter are only allowed if listed in the zoning section in Chapter 3 applicable to the subject property.

SECTION 19.020 Non-Commercial/Stand Alone Power Generating Facilities & Related Uses Review Processes & Approval Standards

A. Review Processes - Non-commercial/Stand Alone Power Generating Facilities & Related Uses (energy facilities) shall be reviewed pursuant to the following. Where standards are less restrictive than comparative standards in other sections, the more restrictive shall govern.

1. Towers - This shall include free standing (Wind Turbine & Meteorological) or roof mounted towers/turbines.

Tower Height	Property Size			
	<2 Acres	2 - < 5 Acres	5 - < 10 Acres	> = 10 Acres
Non-Resource Zones				
< = 35'	*Type I	*Type I	Type I	Type I
> 35' - < 50'	Type II - STS	Type II – STS	Type I	Type I
50' - < 100'	Type II - CUP	Type II – STS	Type II - STS	Type II - STS
100’ - 150’	Type II - CUP	Type II – CUP	Type II - CUP	Type II - STS
Resource Zones				
< 35'	*Type I	*Type I	Type I	Type I
35' - < 50'	Type II - STS	Type II – STS	Type I	Type I
50' - < 100'	Type II -	Type II – STS	Type II - STS	Type II - STS

	CUP			
100' - < 200'	Type II - CUP	Type II – CUP	Type II - STS	Type II - STS
> = 200'	Type II - CUP	Type II – CUP	Type II - CUP	Type II - CUP

*The 4th tower sited on the property shall elevate the review from a Type I to an STS.

Wind turbines that are attached to other lawful uses (excluding roof mounted turbines) including but not limited to street lamps and telephone poles are not subject to the standards of chapter 19. They shall be subject to the same standards and review process as the use to which they are attached as outlined in the applicable zone.

2. Solar Systems

System Size	Property Size				
	<2 Acres	2 - < 5 Acres	5 - < 10 Acres	10 - < 40 Acres	> = 40 Acres
Roof Mounted < = 35' in height	Type I	Type I	Type I	Type I	Type I
*Roof Mounted > 35' in height	STS	STS	STS	Ministerial	Ministerial
**Ground Array < 500 sq. ft.	Type I	Type I	Type I	Type I	Type I
**Ground Array 500 - < 1,500 sq. ft.	Type II – STS	Type II - STS	Type II - STS	Type II - STS	Type I
**Ground Array > = 1,500 sq. ft.	Type II – CUP	Type II - CUP	Type II - CUP	Type II - CUP	Type II - STS

*Roof mounted systems exceeding 35' in height shall be allowed without a variance pursuant to either Chapter 6 or 7.
**Ground Arrays are limited to 35' in height. Ground Arrays exceeding 35' in height will be required to apply for a variance pursuant to either Chapter 6 or 7.

Small solar systems (less than 10 square feet) that are accessory to other lawful uses including but not limited to gates, electric fences & lights are not subject to the standards of chapter 19. They shall be subject to the same standards and review process as the use to which they are accessory as outlined in the applicable zone.

Multiple panels, multiple arrays and supporting equipment providing energy to the same structure or use shall be considered one (1) system in determining the applicable review process. If a portion of the system is already installed and the permit holder is creating an addition to the system, the applicable review process shall be based on the total size of the system.

3. OWRD -Hydroelectric Facilities:

   a. Not Located within an Area of Special Flood Hazard - Hydroelectric energy projects not located within an Area of Special Flood Hazard are not required to meet property development standards within the zone they are being located. If located in a non-resource zone they are allowed without any review by the Planning Department as long as they are being reviewed by the OWRD. If located in a resource zone they are required to be reviewed as a "utility facilities necessary for a public use",

"reservoir", or water impoundment".

b. Located within an Area of Special Flood Hazard – In addition to a. above, hydroelectric energy facilities located within an Area of Special Flood Hazard are subject to Section 3.740, Flood Hazard Overlay by the Planning Department even if they are being reviewed by the OWRD.

4. Additional Non-Commercial/Stand Alone Power Generating Facilities - The review process for energy facilities other than those previously described will be decided by the Planning Department based on an evaluation of the primary purpose of the zone, the size of the subject property and surrounding properties, the proposed location of the use and its potential impact to adjacent properties. Impacts include but are not limited to noise, vibration, smell, emissions, visibility, or physical footprint.

B. Type I Review Standards - The following are applicable to energy facilities in addition to meeting the property development standards of the zone, unless otherwise specified, and any other listed or referenced standards.

1. General Standards for all Energy Facilities:

a. Lawful Use - Power will be for a lawfully established use or use that is in the process of being reviewed by the Planning Department.

b. Interconnect Agreement (Net Metering Only) - The applicant shall provide an interconnect agreement with a local utility or copy of a submitted application requesting an interconnect agreement with a local utility.

c. Closed System (Non-Commercial Stand Alone Only) - The applicant shall provide a plan or diagram that proves the proposal is a closed system and will not tie into a utility.

d. Setback/Buffers - Unless otherwise specified in this chapter, all energy facilities shall meet the property line setbacks of the zone in which they are located, natural resource buffers, as well as any additional setbacks required below.

e. Height - Unless otherwise specified in this Chapter, Pursuant to Section 4.070, General Exceptions to Building Height Requirements, energy facilities shall be exempt from the height limits of the zone in which they are located.

f. Color/Visibility - Energy facilities and their accessory electrical control equipment shall be a non-reflective, unobtrusive color that blends in with the surrounding environment unless otherwise required by the Federal Aviation Administration or Oregon Department of Aviation.

g. Noise – Manufacturer's sound power level shall not exceed 60 db(A).

h. Air Quality - Manufacturer's emissions estimate shall be in compliance with Oregon Department of Environmental Quality in OAR Chapter 340, Division 200.

i. Vibration - Vibrations shall not be produced which are humanly perceptible beyond the property on which the energy facility is located.

j. Odor – To the extent practicable, odors shall not be produced which are humanly perceptible beyond the property on which the energy facility is located.

k. Health & Safety:

(1) All uses or structures shall be designed and constructed to limit access.

(2) Warning and safety signs, up to three square feet in area, are allowed.

(3) All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access.

(4) The manual electrical and/or over speed shutdown disconnect switch(es) shall be clearly labeled.

(5) Utility facility service lines, electrical lines and other wires associated with the energy facility that are not underground shall be kept clear along the route and have a single point of access to the building to the maximum extent practicable while still complying with local, state, and federal electrical codes.

(6) Uses and structures shall be designed and constructed to not impair emergency response. Contact local emergency responder for specific requirements and guidance.

(7) Energy facilities shall be kept and maintained in good repair and condition at all times and shall not pose a potential safety hazard.

l. Advertising - No commercial or advertising markings shall be allowed except those of the manufacturer & installer.

m. Interference with Communication - Energy facilities shall not create any material signal interference with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. Should any material interference occur, the property owner must develop and implement a mitigation plan in consultation with the Planning Department.

n. Decommissioning/Removal - Any facility that is inoperable for more than 12 months shall be deemed discontinued. Removal of the equipment and facilities shall occur within six (6) months of the discontinuance time frame or other time frame approved by the Planning Department unless all or a portion of the equipment and facilities are converted to an approved use within this same time frame.

o. Other Authority - All necessary local, state and federal authorizations/permits shall be obtained prior to constructing the use.

2. Specific Standards:

a. Tower Standards

(1) Setbacks

(a) The base of the tower shall be set back from all property lines, public-rights-of-ways, and above ground public utility lines a distance equal to the height of the tower (i.e., fall height). The setback shall be measured to the center of the tower's base.

(b) Notwithstanding receiving permission from an affected property owner(s), road authority or utility, towers shall still be required to meet the property lines setbacks of the zone in which they are located and all natural resource buffer requirements unless a variance is granted pursuant to either Chapter 6 or 7.

(c) Any guy wires associated with a tower shall be required to meet the property and buffer setbacks of the zone in which they are located unless a variance is granted pursuant to either Chapter 6 or 7.

(2) Safety:

(a) Blade Reach - The lowest extension of any exposed blade or other exposed moving component shall be at least fifteen (15) feet above the ground (at the highest point of the grade level within fifty (50) feet of the base of the tower) and, in addition, at least fifteen (15) feet above any outdoor surfaces intended for human occupancy, such as balconies, that are located directly below the blade.

The minimum height may be reduced if a safety fence is installed around the area of the exposed blade or other moving component that would prevent access and direct contact with the exposed blade or other moving component. The minimum height may also be reduced through the Type II /STS review process in subsection C below.

(b) Wind turbines shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, over-speeding and excessive pressure on the tower structure, rotor blades and other wind energy components unless the manufacturer certifies that a braking system is not necessary.

(c) Towers shall be equipped with lightning protection.

(d) Towers shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

(e) "Danger" signs shall be posted at the height of five feet on the tower if it has a climbing apparatus.

(f) Permit holders are encouraged to sheath guy wires in a covering that would increase their visibility from a height of three feet above ground to eight feet above ground.

(3) Avian Protections - Perch deterrents shall be placed on all surfaces that would

attract birds to a location where they could be struck by a moving component on the tower such as the sweep of a wind turbine blade.

(4) Lighting - Lighting of towers subject to only a Type I review is not allowed.

b. Solar System Standards:

(1) Safety

(a) Roof mounted solar panels shall be installed in a manner that maintains adequate fire department access to the roof, with an unobstructed path from the structures eaves to structure components located on the roof (i.e., chimney, stove pipe, other roof mounted appliances). Contact local fire official for specific requirements and guidance.

(b) Ground arrays shall maintain a ten feet (10') perimeter of fire fuel break. Refer to Section 10.120 of the Fire Safety Standards for a description of a fire fuel break.

(2) Solar Access Rights - The establishment of a solar system consistent with the requirements of this ordinance shall not constitute solar access rights that are protected by this ordinance.

C. Type II Review Standards - The following are applicable to energy facilities in addition to meeting the Type I Review Standards in subsection B above, the property development standards of the zone, unless otherwise specified, and any other listed or referenced standards.

1. General Standards for all Energy Facilities

a. General Compatibility - The proposed use is compatible with adjacent surrounding properties taking into consideration the following:

(1) Scale
(2) Odors
(3) Vibration

b. Noise - If the manufacturer's sound power level exceeds 60 db(A) or there is no manufacturer's stated sound power level, the applicant shall submit an analysis from a qualified consultant or individual and written report to prove operation of the energy facility shall be in compliance with sound pressure noise regulations established by the Oregon Department of Environmental Quality in OAR Chapter 340, Division 35 with regard to any existing dwellings on non-participating landowners property. These regulations shall govern notwithstanding the energy facility is neither a commercial or industrial use.

2. Specific Standards:

a. Tower Standards:

(1) Aviation Notification - Planning staff shall notify the following groups or agencies

as to the location of the proposed tower(s). Comments received regarding safety may be included as safety features required in subsection (2) below.

(a) Aerial Sprayers and operators who have requested to be notified - All towers over 50' in height.

(b) Oregon Department of Aviation (ODA) & Federal Aviation Administration (FAA) - All towers over 200 feet in height or as prescribed by OAR 738-070-0110.

(2) Aircraft Safety Plan - A safety plan shall be submitted that will ensure aircraft safety is maintained for all towers 50' in height or greater. Unless a determination of no hazard is made, safety features will be required as necessary to ensure aircraft safety based on the location, height, and type of tower. Any safety features required as part of an approval shall be completed at the time the tower is installed. Safety features, if required, could include but are not limited to the following:

(a) Placing an aviation device or equivalent visible marker at each of the outermost guy wire anchors.

(b) Painting the top 30 feet of each tower with 5 foot bands of alternating colors of Aviation Orange and Aviation White.

(c) Lighting - Lighting of towers shall be evaluated on a case by case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.

(3) Minimum Height - The lowest extension of any exposed blade or other exposed moving component may be allowed less than (15) feet above the ground as required by subsection B(2)(a)(2) if based on the proposed location and site specific circumstances, the tower will not represent a safety hazard.

(4) Shadow Flicker – Upon the non-participating owner's request, the applicant shall demonstrate that the wind turbines, taking into account mitigation measures, will have no significant adverse impact of shadow flicker on an existing dwelling of a non-participating landowner within ¼ mile (1,320 feet) from a turbine, measured from the centerline of the turbine to the centerline of the dwelling.

Towers shall be allowed to create an adverse shadow flicker impact to an existing dwelling on a non-participating landowner's property if written permission from the property owner and an adjustment is granted under Section 19.030(D)(1)(c). Said written permission shall be made part of the deed records of the non-participating landowner's property.

b. Solar Standards:

(1) Ground Leveling - The solar energy facility shall be designed and constructed to minimize ground leveling and to the extent reasonably practicable, limit ground leveling to those areas needed for effective solar energy collection.

(2) Misdirection of Solar Radiation - The solar energy facility shall be designed, constructed, and operated to prevent the misdirection of concentrated solar radiation onto nearby properties, public roadways or other areas accessible to the public.

(3) Glare - The solar energy facility shall be designed, constructed and operated such that any significant or prolonged glare is directed away from any nearby properties or public roadways.

(4) Cleaning Chemicals and Solvents - During operation of the solar energy facility, all chemicals or solvents used to clean solar panels or heliostats shall be low in volatile organic compounds and to the extent reasonably practicable, the permit holder shall use recyclable or biodegradable products.

D. CUP/Type II Review Standards - Energy facilities subject to conditional use review shall meet the standards of Chapter 5, Conditional Use Review, the Type I Review Standards in subsection B above, the Type II Review Standards in subsection C above, the property development standards of the zone, unless otherwise specified and any other listed or referenced standards.

SECTION 19.030 Commercial Power Generating Facilities Review Processes & Approval Standards

A. Review Processes - Commercial Power Generating Facilities & Related Uses (energy facilities) shall be reviewed pursuant to the following. Where standards are less restrictive than comparative standards in other sections, the more restrictive shall govern.

1. Review Authority:

a. Planning Commission Review – Notwithstanding applications reviewed by EFSC and unless otherwise specified all energy facilities reviewed pursuant to this section shall be initially heard and decided upon by the Planning Commission in a public hearing.

b. Planning Department Review:

(1) Small Scale Commercial Power Generating Facilities - A commercial power generating facility shall be considered small scale if it falls within either the tower or solar matrix listed in Section 19.020, Non-Commercial Power Generating Facilities and shall be reviewed by the Planning Department pursuant to the standards of Section 19.020 and not this section.

For non-resource zones, solar arrays shall be limited to ¼ acre and towers to no more than 150' in height and no more than 4 towers per property. For resource zones solar arrays shall be limited to ½ acre and towers to under 200' in height and no more than 4 towers per property shall be reviewed by the Planning Department.

Beyond these limits the energy facility will not be considered small scale and will only be allowed pursuant to the standards in this section.

(2) Community Projects - Renewable projects of 10MW or less which include a partnership between a local land owner and a community (public) organization such as Wasco County, Mid-Columbia Council of Governments, a city, or a school district, shall be reviewed by the Planning Department.

(3) Post EFSC Review - Pursuant to ORS 469.401, after issuance of a site certificate by EFSC pursuant to subsection c. below, and subject to receiving the proper fees, Wasco County will issue in an expedited manner any permits, licenses and certificates addressed in the site certificate subject only to conditions set forth in the site certificate but without hearings or other proceeding (i.e., Type I review).

(4) Hydroelectric Energy Facilities - See subsection d. below.

c. EFSC Review:

(1) EFSC has regulatory authority over all energy facilities designated by ORS 469.300. However, pursuant to ORS 469.480 EFSC shall designate the BOC as a Special Advisory Group. As such and at their discretion the BOC may participate in the siting process pursuant to the role established in ORS 469 and OAR 345, which includes recommending substantive criteria applicable to the proposed energy facility.

(2) Pursuant to ORS 469.320(8), notwithstanding the threshold limits in ORS 469.300, an applicant can elect to have EFSC review an energy facility that may otherwise be subject to Wasco County's jurisdiction.

(3) If for any reason the BOC desires, they may defer regulatory authority of energy facility to EFSC notwithstanding it is less than the threshold designated by ORS 469.300.

d. OWRD Review - Hydroelectric Energy Facilities:

(1) Not Located within an Area of Special Flood Hazard - Hydroelectric energy facilities not located within an Area of Special Flood Hazard are not required to meet property development standards within the zone they are being located. If located in a non-resource zone they are allowed without any review by the Planning Department as long as they are being reviewed by OWRD or FERC. If located in a resource zone they are required to be reviewed as a "utility facilities necessary for a public use".

(2) Located within an Area of Special Flood Hazard - In addition to d.(1). above, hydroelectric energy facilities located within an Area of Special Flood Hazard are subject to Section 3.740, Flood Hazard Overlay by the Planning Department even if they are being reviewed by the OWRD or FERC.

e. FERC Review - FERC has regulatory authority over all energy or related projects of a size, scale or interest to the federal government pursuant to Title 18, Conservation of Power and Water Resources, of the Code of Federal Regulations.

2. County Decision Options - As part of the application materials the applicant shall indicate if they are requesting tentative or final approval. For facilities sited through EFSC, this section does not apply.

a. Tentative Approval - A tentative approval may be issued when the applicant has submitted most of the required application materials but defers completion of one or more required discretionary elements such as the wildlife plan and all of its required baseline studies. Any deferred discretionary elements will be the only elements reviewed and decided upon during the final approval process.

A tentative approval shall specify a time limit or expiration date within which all deferred discretionary review elements or plans shall be reviewed for final approval. Pursuant to Section 2.125, Time Limits for Permits and Extensions of Time, the combined time for both the tentative and final approval shall be limited to 2 years with the opportunity for a onetime 2 year extension. This time frame shall start on the date of the tentative approval.

b. Final Approval - Final approval occurs when the applicant has submitted all of the required application materials, Wasco County has issued a decision which includes conditions of approval that can be submitted for staff review and verification, and the appeal period has concluded.

3. Modifications - An amendment to the conditional use permit shall be required if the proposed facility changes would:

a. Require an expansion of the established facility boundaries where the original facility was sited or constructed;
b. Increase the number of towers; or
c. 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.

B. Non-Resource Zone Standards:

1. Small Scale Commercial Power Generating Facilities - Pursuant to Subsection A(1)(b)(1) above, commercial power generating facilities that are considered small scale will be allowed in non-resource zones subject to the standards of Section 19.020.

2. Large Scale Commercial Power Generating Facilities - Except for related or supporting facilities, large scale commercial power generating facilities shall not be allowed in non-resource zones.

3. Related or Supporting Facilities (Reasonable Alternatives Analysis) - Related or supporting facilities to a commercial power generating facility may be allowed in non-resource zones subject to Conditional Use Review upon a showing that such related or supporting facilities are necessary for siting the commercial power generating facility. To the extent practicable, any related or supporting facilities must be consistent in size, scale, and impact as other existing or allowed uses in the non-resource zone. Related or Supporting Facilities shall be reviewed as part of the Commercial Power Generating Facility and not subject to a separate Conditional Use Review. To demonstrate the

related or supporting facilities are necessary within the meaning of this section, an applicant must show that reasonable alternatives have been considered and that the related or supporting facilities must be sited in a non-resource zone after considering the following factors:

a. Technical and engineering feasibility of siting the energy facility as a whole;

b. Availability of existing rights-of-ways and public roads and proximity to transmission lines and interconnections;

c. Environmental impacts associated with avoiding non-resource zoned land; and

d. Protection of farm and forest resources.

C. General Standards - The following standards apply to energy facilities as outlined in Section A above, in addition to meeting the Conditional Use Standards listed in Chapter 5:

1. Air Safety - All structures that are more than 200 feet above grade or, exceed airport imaginary surfaces as defined in OAR Chapter 738, Division 70, shall comply with the air hazard rules of the Oregon Department of Aviation and/or Federal Aviation Administration. The applicant shall notify the Oregon Department of Aviation and the Federal Aviation Administration of the proposed facility and shall promptly notify the Planning Department of the responses from the Oregon Department of Aviation and/or Federal Aviation Administration.

   Aerial Sprayers and operators who have requested to be notified will receive all notifications associated with the energy facility as required by Chapter 2, Development Approval Procedures.

2. Interference with Communications - The energy facility shall be designed, constructed and operated so as to avoid any material signal interference with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. Should any material interference occur, the permit holder must develop and implement a mitigation plan in consultation with the Planning Department.

3. Noise - The energy facility shall comply with the noise regulations in OAR Chapter 340, Division 35. The applicant may be required to submit a qualified expert's analysis and written report.

4. Visual Impact

   a. Scenic Resources – To issue a conditional use permit for an energy facility, the county must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources or values identified as significant or important in the Wasco County Comprehensive Plan.

   b. Protected Areas - Except as provided in subsections (b) and (c) below, an energy facility shall not be located in the areas listed below:

(1) National recreation and scenic areas, including but not limited to the Columbia River Gorge National Scenic Area;

(2) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(3) State parks and waysides as listed by the Oregon Department of Parks and Recreation;

(4) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(5) National and state fish hatcheries or national and state wildlife refuges;

(6) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(7) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782; and

a. Exceptions to Protected Areas - Except where the following uses are regulated by federal, state or local laws, including but not limited to the Columbia River Gorge National Scenic Area Act and implement land use ordinances, the following may be approve in a protected area identified in subsection (b) above if other alternative routes or sites have been studied and been determined to have greater impacts

- An electrical transmission line;
- A natural gas pipeline; or
- An energy facility located outside a protected area that includes an electrical transmission line or natural gas or water pipeline as a related or supporting facility located within a protected area.

b. Transmission Line & Pipeline Exception - The provisions of subsection (b) above do not apply to electrical transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line or one natural gas pipeline.

c. Additional Visual Mitigation Impacts for all Facilities - The design, construction and operation of the energy facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified in subsection (b) above. Methods to mitigate adverse visual impacts could include but are not limited to:

(1) Building the energy facility near the edge of contiguous timber areas or using the natural topography to obscure the energy facility;

(2) Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation; and

(3) Retaining or planting vegetation to obscure views of the energy facility.

5. Natural Resource/Wildlife Protection - Taking into account mitigation, siting, design, construction and operation the energy facility will not cause significant adverse impact to important or significant natural resources identified in the Wasco County Comprehensive Plan, Wasco County Land Use and Development Ordinance or by any jurisdictional wildlife agency resource management plan adopted and in effect on the date the application is submitted. As appropriate, the permit holder agrees to implement monitoring and mitigation actions that Wasco County determines appropriate after consultation with the Oregon Department of Fish and Wildlife, or other jurisdictional wildlife or natural resource agency. Measures to reduce significant impacts may include, but are not limited to the following:

   a. Providing information pertaining to the energy facility's potential impacts and measures to avoid impacts on:

      (1) Wildlife (all potential species of reasonable concern);
      (2) Wildlife Habitat;
      (3) Endangered Plants; and
      (4) Wetlands & Other Water Resources.

   b. Conducting biologically appropriate baseline surveys in the areas affected by the proposed energy facility to determine natural resources present and patterns of habitat use.

   c. Selecting locations to reduce the likelihood of significant adverse impacts on natural resources based on expert analysis of baseline data.

   d. Utilizing turbine towers that are smooth steel structures that lack features that would allow avian perching. Where horizontal surfaces cannot be avoided, anti-perching devices shall be installed where it is determined necessary to reduce bird mortality.

   e. Designing and installing all aboveground transmission line support structures following the current suggested practices for avian protection on power lines published by the Avian Power Line Interaction Committee.

   f. Utilizing towers and transmission line support structures designed so the foundation area and supports avoid the creation of artificial habitat or shelter for raptor prey.

   g. Controlling weeds to avoid the creation of artificial habitat suitable for raptor prey such as spreading gravel on turbine pad.

   h. Avoiding construction activities near raptor nesting locations during sensitive breeding periods and using appropriate no construction buffers around known nest sites.

   i. Locating transmission lines or associated transmission lines with the energy facility

to minimize potential impacts (e.g., 50 feet from the edge of the nearest wetland or water body except where the line is required to cross the wetland or water body; or separating transmission lines or associated transmission lines with the energy facility from the nearest wetland or water body by topography or substantial vegetation to the extent practical, except where the line is required to cross the wetland or water body).

j. Locating transmission towers or associated transmission towers outside of Class I or II streams unless:

(1) Adjoining towers and conductors cannot safely and economically support the line(s) that span the stream without an in-stream tower; and

(2) The lines cannot be safely and economically placed under the water or streambed.

(3) Developing a plan for post-construction monitoring of the facility site using appropriate survey protocols to measure the impact of the project on identified natural resources in the area.

6. Protection of Historical and Cultural Resources - The applicant shall complete a cultural resources survey of areas where there will be temporary or permanent disturbance. During construction, cultural resources included in the Wasco County Comprehensive Plan shall be flagged and avoided in areas of potential temporary or permanent disturbance, and construction activities monitored to ensure all cultural resources in such areas are avoided, unless appropriate permits are obtained from the Oregon State Historic Preservation Office. Prior to construction an Inadvertent Discovery Plan (IDP) shall be developed that must outline the procedures to be followed in the case previously undiscovered archeological, historical or cultural artifacts are encountered during construction or operation of the energy facility, in compliance with ORS 358.905-358.955 and any other applicable local, state and federal law.

7. Fire Protection & Emergency Response - A fire protection and emergency response plan shall be developed and implemented in consultation with the applicable fire district or department and/or land management agency to minimize the risk of fire and respond appropriately to any fire or emergency that occurs onsite for all phases of the life of the facility. In developing the plan the applicant shall take into account, among other things, the terrain, dry nature of the region, address risks on a seasonal basis, and identify the locations of fire extinguishers, nearby hospitals, telephone numbers for emergency responders, and first aid techniques.

8. Public Safety - A public safety plan shall be developed and implemented to exclude members of the public from hazardous areas within the Energy Facility Project Area.

9. Transportation Plan - A transportation plan shall be developed and implemented in consultation with the Wasco County Road Department and/or the Oregon Department of Transportation (ODOT). The plan shall be consistent with any applicable requirements from the Wasco County Transportation System Plan and shall also provide or address:

a. The size, number, and location of vehicle access points off of public roads.

b. Use of existing roads to the extent practical to minimize new access roads.

c. Restoring the natural grade and revegetating all temporary road cuts, used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

d. A Road Impact Assessment/Geotechnical Report for roads to be used by the project. Said report should include an analysis of project-related traffic routes to be used during phases of construction, project operation and decommissioning. The report and any subsequent amendments shall be used as a discipline study and shall be incorporated into the Road Use Agreement between the Applicant and the County.

10. Road Use Agreement - Where applicable, the Wasco County Road Department shall require the applicant to enter into a Road Use Agreement with the County to ensure that project construction traffic is mitigated and any damage to county roads that is caused by the construction of the energy facility or its related or supporting facilities is repaired by the applicant, and such county roads are restored to pre-construction conditions or better (this includes a weed plan and providing for re-vegetation).

    - General design standards for roads shall, in general, conform to policies set forth in Chapter 21.
    - As part of the Road Use Agreement the applicant shall also obtain a utility permit for all project utility installation and approach permits for road approach access to county roads.

11. Onsite Access Roads and Staging Areas - The impact of onsite access roads and staging areas within the Energy Facility Project Area shall be limited by:

    a. Constructing and maintaining onsite access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site;

    b. Using existing onsite access roads to the extent practical and avoiding construction of new on-site access roads as much as possible; and

    c. Restoring the natural grade and revegetating all temporary access roads, road cuts, equipment staging areas and field office sites used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

12. Dust Control - All approved non-paved temporary or permanent roads and staging areas within the Energy Facility Project Area shall be constructed and maintained to minimize dust, which may be addressed through the Road Use Agreement. If roads and staging areas are not construct with material that would prevent dust, the permit holder must regularly water roads and staging areas as necessary or apply an approved dust suppression agent such as Earthbind 100 to minimize dust and wind erosion.

13. Erosion and Sediment Control - All ground disturbing activities shall be conducted in compliance with a National Pollutant Discharge Elimination System (NPDES) permit as may be required by Oregon Department of Environmental Quality. Where applicable, an NPDES permit must be obtained. The plan must include best management practices for

erosion control during construction and operation and permanent drainage and erosion control measures to prevent damage to local roads or adjacent areas and to minimize sediment run-off into waterways.

14. Weed Control - A weed plan shall be developed in consultation with the Wasco County Weed Department and implemented during construction and operation of the energy facility.

15. Signs - Outdoor displays, signs or billboards within the energy facility project boundary shall not be erected, except:

    a. Signs required for public or employee safety or otherwise required by law; (e.g., OSHA or compliance with the Manual of Uniform Traffic Control Devices (MUTCD) administered through the County Road Department); and

    b. No more than two signs relating to the name and operation of the energy facility of a size and type to identify the property for potential visitors to the site, but not to advertise the product. No signs for advertising of other products are permitted.

16. Underground Systems - Where reasonably practicable, power collector and communication systems shall be installed underground, at a minimum depth of 3 feet. Shallower depths may be authorized where notification and safety measures are taken and wires are placed in schedule 40 conduit. The cable collector system shall be installed to prevent adverse impacts on agriculture operations and natural resources.

17. Operation & Maintenance Buildings - Permanent maintenance/operations buildings shall be located in the same zone as the principal energy facility, except that such buildings may be constructed in a separate zone if:

    a. The building is designed and constructed generally consistent with the character of similar buildings used in the surrounding area; and

    b. The building will be removed or converted to another approved use upon decommissioning of the energy facility consistent with the provisions of this ordinance.

18. Coordination and Documentation - Prior to commencement of any construction, all other necessary permits shall be obtained, e.g. building permit, rural address, road approach, utility and other permits from the Wasco County Public Works Department, and/or from ODOT as well as any other applicable local, state or federal permits or approvals.

19. Termination and Decommissioning. For an energy facility sited through EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with these requirements.

    a. The applicant shall prepare a decommissioning plan that describes the actions 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.

b. The applicant shall provide a detailed cost estimate, a comparison of that estimate with funds to be set aside, in the form of a financial assurance (bond, letter of credit, insurance policy other such form of guarantee acceptable to Wasco County), and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate and financial assurance may take into account salvage value associated with the project, and can be requested for review and update by Wasco County at their discretion (e.g., every 5 years).

c. The following shall be required as conditions of the Wasco County approval:

(1) If operation of the energy facility ceases or begins construction of the project, but does not complete it, the permit holder shall restore the site according to a plan approved by Wasco County. A plan shall be submitted that ensures the site will be restored to a useful, non-hazardous condition without significant delay, including but not limited to the following:

(a) Removal of aboveground and underground equipment, structures and foundations to a depth of at least three feet below grade (four feet if cropland). Underground equipment, structures and foundations need not be removed if they are at least three feet below grade and do not constitute a hazard or interfere with agricultural use or other resource uses of the land. Restoration of the surface grade and soil after removal of aboveground structures and equipment.

(b) Removal of graveled areas and access roads and restoration of surface grade and soil.

(c) Revegetation of restored soil areas with native seed mixes, plant species suitable to the area, consistent with Wasco County's weed control plan.

(d) For any part of the energy facility on leased property, the plan may incorporate agreements with the landowner regarding leaving access roads, fences, gates or buildings in place or regarding restoration of agricultural crops or forest resource land. Said landowner will be responsible for maintaining said facilities for purposes permitted under applicable zoning.

(e) The underground power collector and communication lines need not be removed if at a depth of three feet or greater. These cables 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.

(f) The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration.

(e) The plan must include a schedule for completion of site restoration work.

(2) Before beginning construction of the energy facility, the permit holder must submit in a form and amount satisfactory to Wasco County, assuring the availability of adequate irrevocably committed funds to restore the site to a

useful, non-hazardous condition naming Wasco County as beneficiary or payee. The form may include posting a bond, issuing an irrevocable letter of credit, purchasing a paid up insurance policy or by other means acceptable by Wasco County and shall ensure continuity between owners.

(3) The amount of the financial assurance (bond or other such form of guarantee) shall be annually adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"). The permit holder (including possible successor if sold or transferred) shall increase the amount of the financial assurance annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the Index is no longer published, Wasco County shall select a comparable index for adjusting the amount. The amount of the financial assurance shall be prorated within the year to the date of decommissioning.

(4) Per the request of Wasco County, the permit holder (including possible successor if sold or transferred) shall describe the status of the financial assurance in a report (e.g., annual update report submitted to Wasco County).

(5) The financial assurance shall not be subject to revocation or reduction before retirement of the energy facility site.

20. Final Location - The actual latitude and longitude location or Oregon State Plane NAD83 HARN (international feet) coordinates of the energy facility and related or supporting facilities shall be provided to the County GIS Department once commercial electrical power production begins. Alternatively, this information could be provided in GIS layer consistent with the datum referenced above or any other datum deemed acceptable by the Wasco County GIS Department.

21. Power Production Reporting - The County may require a report of nonproprietary power production for any time frame after the energy facility first begins production if permitted through the County. If requested, the permit holder shall have 180 days to produce said report.

D. Specific Standards - The following standards apply to specific types of energy facilities as described, in addition to the General Standards in Section C above.

1. Wind Energy Facilities:

a. Visual Impact - To the extent practical, the proposed wind energy facility has been designed to minimize visual impact upon open space and natural landscape by:

(1) Using underground communication and power collector lines (transmission lines that connect each turbine to a substation);

(2) Using turbine towers of uniform design, color and height;

(3) Lighting - Lighting of towers shall be evaluated on a case-by-case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation

Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.

(4) Using existing roads within the Energy Facility Project Area to provide access to the site, or if new roads within the Energy Facility Project Area are needed, minimizing the amount of land used for new roads and locating roads to reduce visual impact;

(5) Using existing substations, or if new substations are needed, minimizing the number of new substations; and

(6) Shadow Flicker – Upon the non-participating owner's request, the applicant shall demonstrate that the wind turbines, taking into account mitigation measures, will have no significant adverse impact of shadow flicker on an existing dwelling of a non-participating landowner within ¼ mile (1,320 feet) from a turbine, measured from the centerline of the turbine to the centerline of the dwelling.

Towers shall be allowed to create an adverse shadow flicker impact to an existing dwelling on a non-participating landowner's property if written permission from the property owner and an adjustment is granted under Section 19.030(D)(1)(c). Said written permission shall be made part of the deed records of the non-participating landowner's property.

b. Public Safety - The wind energy facility shall be designed, constructed, and operated to protect the public by measures that may include, but are not limited to, the following:

(1) Installing the tower so at the closest point, the sweep of any exposed blade or other exposed moving component is at least 20 feet above the tallest existing or foreseeable obstruction to blade movement unless based on the proposed location and site specific circumstances, the tower will not represent a safety hazard; and

(2) Designing, constructing and operating the energy facility to exclude members of the public from close proximity to turbine blades and electrical equipment, including installing locks on turbine tower access doors; and

(3) Designing, constructing and operating the energy facility to protect against structural failure of the turbine tower or blades that could endanger members of the public's safety, including having adequate safety devices and testing procedures designed to warn members of the public of impending failure and to minimize the consequences of such failure.

c. Setbacks:

(1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries described in (3)(C) below. Wind turbines shall to meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings

a. Participating Landowners: For owners of legal resource dwellings who are also landowners in the Energy Facility Project Area, wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction, provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

b. Non-Participating Landowners: For owners of legal resource dwellings who are not landowners in the Energy Facility Project Area, wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

c. Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon findings that the following criteria are met:

(1) Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility.
(2) The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
(4) The proposed adjustment will not unduly burden existing infrastructure.
(5) The proposed adjustment will not unduly impair safety in the area.

(6) The proposed adjustment will minimize impacts to environmental resources.

(4) Non-Resource Boundaries - Wind turbines shall be setback:

(a) A minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of urban growth boundaries and urban reserves (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these properties. .

(b) 3/4 mile (3,960 feet) from the established city limit or urban growth boundary or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision

(c) The distance required to meet the DEQ noise standard (OAR 340-035-0035) unless a noise easement is obtained under OAR 340-035-0035.

(d) Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized by upon findings that the following criteria are met:

(1) Written Consent:

i Proposal for administrative adjustment relating to incorporated cities shall include written authorization from the appropriate city authority.
ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different than city limits) shall include written consent from all owners directly impacted by the proposed adjustment.

(2) The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
(4) The proposed adjustment will not unduly burden existing infrastructure.
(5) The proposed adjustment will not unduly impair safety in the area.
(6) The proposed adjustment will minimize impacts to environmental resources.

(5) Downwind Properties - The establishment of a commercial wind energy facility consistent with the requirements of this ordinance shall not constitute wind

access rights that are protected by this ordinance beyond the following setback requirement.

If a wind turbine 200' in height or taller has been previously placed on a downwind property that is not part of the project, the closest tower on the upwind property shall be set back a minimum of fifteen rotor diameters from the downwind tower location or any lesser distance agreed to by the downwind and upwind property owners or those authorized to act on their behalf.

2. Solar Energy Facilities:

   a. Ground Leveling – The solar energy facility shall be designed and constructed to minimize ground leveling and to the extent reasonably practicable, limit ground leveling to those areas needed for effective solar energy collection.

   b. Misdirection of Solar Radiation - The solar energy facility shall be designed, constructed, and operated to prevent the misdirection of concentrated solar radiation onto nearby properties, public roadways or other areas accessible to the public, or mitigated accordingly.

   c. Glare - The solar energy facility shall be designed, constructed and operated such that any significant or prolonged glare is directed away from any nearby properties or public roadways, or mitigated accordingly.

   d. Cleaning Chemicals and Solvents - During operation of the solar energy facility, all chemicals or solvents used to clean solar panels or heliostats shall be low in volatile organic compounds and to the extent reasonably practicable, the permit holder shall use recyclable or biodegradable products.

   e. Wildlife - Measures to reduce wildlife impact may include using suitable methods such as coloration or sound producing devices to discourage birds from entering areas of concentrated solar energy near solar-thermal mirrors or other devices that concentrate solar radiation.

3. Cogeneration Facilities:

   a. The cogeneration facility would supply thermal energy to an existing or approved industrial or commercial use.

   b. Except as allowed in this section, an electric transmission line or natural gas or petroleum pipeline necessary for the cogeneration facility must be an upgrade to an existing transmission line or pipeline or must otherwise be constructed in an existing right-of-way or utility easement. If the proposed electric transmission line or natural gas or petroleum product pipeline necessary for the proposed cogeneration project is not an upgrade to an existing transmission line or pipeline, the transmission line or pipeline must comply with the standards in subsection 4 or 5 below.

4. Electrical Transmission Facilities:

   a. Use of Existing Routes/Co-Locating - The development uses available developed or approved road and utility rights-of-way, easements or transmission facilities that can

accommodate the proposed facility. New routes are permitted if more adverse energy, environment, economic, and social consequences would result from using an existing route than development of other rights-of-way or easements.

b. Adjacent to Existing Routes - To the extent practical, any part of the proposed transmission or distribution line outside an existing route would be adjacent to an existing public road or utility right-of way or easement.

c. New Routes - If all or part of the proposed transmission line is outside an existing route or not adjacent to an existing route:

(1) The proposed new route would serve an existing or proposed electric generation project that is not adjacent to an existing right-of-way or easement, or

(2) The proposed new route would result in less adverse energy, environmental, economic and social consequences than would result from using an existing route.

d. Setbacks to dwellings - Unless sited within a public road right-of-way, new electrical transmission lines shall not be constructed closer than 500 feet to an existing dwelling without prior written approval of the owner. Said written approval shall be made part of the deed records to that property.

5. Natural Gas or Petroleum Product Pipelines:

a. Use of Existing Routes - To the extent practical, the proposed pipeline would use developed or approved road and utility rights-of way or easements that can safely accommodate the proposed line.

b. Adjacent to Existing Routes - To the extent practical, any part of the proposed pipeline outside an existing route would be adjacent to an existing public road or utility right-of-way or easement.

c. New Routes - If all of part of the proposed pipeline is outside an existing route or not adjacent to an existing route:

(1) The proposed new route would serve an existing or proposed electric generation project that is not adjacent to an existing right-of-way or easement, or

(2) The proposed new route would result in less adverse energy, environmental, economic and social consequences than would result from using an existing route.

d. Stream crossings: If the proposed pipeline would cross a stream or river that is important habitat for a state or federally-listed threatened or endangered species, the permit holder must use a crossing technique or method approved by the Oregon Department of Fish and Wildlife.

WASCO COUNTY
LAND USE
&
DEVELOPMENT ORDINANCE
AMENDMENTS

FINAL DRAFT

APRIL 4, 2012

PLANNING COMMISSION

May 3, 2011

June 7, 2011

BOARD OF COMMISSIONERS

February 15, 201

March 20, 2012

April 4, 2012

Land Use & Development Ordinance Amendments

Final Draft – April 4, 2012

Local amendments to the Wasco County Land Use and Development Ordinance (LUDO) to:

- Amend language related to where and how commercial and non-commercial energy development is allowed.
- Modernize language that is not compliant with state law, incorrect, or out of date.
- Reformat all zones and add similar uses to create as much consistency between the zones as possible.
- Make other amendments appropriate for Wasco County to improve the use and effectiveness of the LDUO.

Key to Amendments:

- Highlighted & Underlined = Language proposed to be included.
- ~~Highlighted & Strikethrough~~ = Language proposed to be deleted.
- Clarity provided in (italics and parentheses) after some changes to provide details or clarity.
- **Pages 78- 101 (Chapter 19 – Standards for Energy Facilities): Because the bulk of the substantive changes related the amendments are located in Chapter 19, the text of the entire amended Chapter is included.**

CHAPTER 1 AMENDMENTS

Anemometer - A device to measure the wind speed, generally mounted to a meteorological tower.

Associated transmission lines - (1) New transmission lines constructed to connect an energy facility to the project's substation(s). (2) New transmission lines constructed to connect the project's substations(s) to the power grid only if they are owned by the developer of the project. Any transmission line owned by a public utility is not an associated transmission line.

Biomass Energy Facility - A facility producing energy from biomass and its related or supporting facilities.

Blade - An element of a wind turbine ~~WECS~~ rotor which forms an aerodynamic surface or surfaces to convert movement of air into mechanical energy or torque.

BOC - Wasco County Board of County Commissioners.

Building Mounted Wind Turbine - A Wind Turbine mounted or attached to a building.

Commercial Energy Facility – See Commercial Power Generating Facility. ~~– An electrical power generating plant with a nominal electrical generating capacity of more than 25,000 kilowatts or operates at more than 230 kilovolts; including, but not limited to: a thermal power plant, hydroelectric power plant, combustion turbine power plant, geothermal power plant, electric power transmission facility, or a nuclear installation, including a power reactor, re-processing plant, waste disposal facility, and any facility handling a quantity of fissionable materials sufficient to form a critical mass. A commercial power generation facility includes related or supporting facilities including any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, office or industrial structures built in conjunction with and used as part of the energy facility. A commercial power generation facility does not include a portable power plant, the principal use of which is to supply power in emergency or for individual domestic use.~~

Commercial Power Generating Facility (Utility Facility For The Purpose Of Generating Power) - A facility for the production of energy and its related or supporting facilities that:

a. Generates energy using means listed in ORS or OAR such as solar power, wind power, fuel cells, hydroelectric power, thermal power, geothermal power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones which allow "Farm Use" and 215.283(1)(r) in the Exclusive Farm Use zone; and

b. Is intended to provide energy for sale.

See "Net Metering Power Facility", "Non-Commercial/Stand Alone Power Generating Facility" and "Small Scale Commercial Power Generating Facility" for additional definitions related to energy production.

Commercial Utility Facility - ~~Any energy facility or commercial energy facility.~~ See Commercial Power Generating Facility.

Communication Tower - Any tower designed to support commercial radio, television, and/or telecommunications receiving or broadcasting antennas, dishes, buildings and associated commercial equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals.

Downwind - On the opposite side from the prevailing direction from which the wind blows.

Downwind Properties - Properties downwind of the project boundary that have been developed as part of a Commercial Power Generating Facility.

EFSC - Oregon Energy Facility Siting Council as established under ORS 469.450 and defined in ORS 469.300(7). The Council includes seven members appointed by the governor and confirmed by the Oregon Senate with the responsibility for overseeing and approving the development of energy facilities, as defined in ORS 469.300.

Electrical Transmission Facilities - The conductors, lines, structures, towers, substations, switching

stations, buildings, corridor, and construction staging and assembly areas associated with the transmission of electricity from power sources to the regional power grid and from the regional power grid to the local power distribution system, but not including "Associated Transmission Lines".

Energy - The amount of work that can be performed by a force.

Energy Facility - ~~A hydroelectric, wind energy, , biomass, geothermal, or transmission, facility with a nominal electric generating capacity of 25 MW or less or carrying 230 kV or less.~~ A solar, wind, fuel cell, hydroelectric, thermal, geothermal, cogeneration, landfill gas, digester gas, waste, dedicated low emission renewable crop, nontoxic biomass based on solid organic fuels from wood, forest or field residues, electrical transmission, natural gas pipeline, or petroleum product pipeline facility.

Energy Facility Project Area - The proposed location of an energy facility and all of its related and supporting facilities as well as lands within the project lease boundary but outside the area of the primary development where there could be negative physical consequences as a result of the project such as soil compaction or erosion. ~~any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility, and the area affected by the facility.~~

FERC - Federal Energy Regulatory Commission – The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates. FERC also reviews and authorizes liquefied natural gas (LNG) terminals, interstate natural gas pipelines and non-federal hydropower projects.

Grid - The utility distribution system. The network that connects electricity generators to electricity users.

Height of Tower - The height of the vertical distance from the base of the tower, pole or building on which it is located to the tallest vertical point including any attachment that exceeds the highest point on the tower structure (i.e. maximum blade tip or antennae).

Inverter - A device that converts direct current (DC) to alternating current (AC).

Joule - Amount of work done by a force of one newton moving an object through a distance of one meter.

Kilowatt (kW) - A measure of power for electrical current (1,000 watts).

Kilowatt-hour (kWh) - A measure of energy equal to the use of one kilowatt in one hour.

Meteorological Tower - The tower and any of the following: base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), temperature and pressure sensors, other weather measuring devices attached to the tower, wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit weather information at a given location.

Nacelle -The structure which houses all of the generating components, gearbox, drive train and other components of the wind turbine.

Net Metering Power Facility - A facility for the production of energy that:

a. Generates energy using means listed in ORS or OAR such as solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones which allow "Farm Use" and 215.283(1)(r) in the Exclusive Farm Use zone;

b. Is intended to offset part of the customer-generator's requirements for energy;

c. Will operate in parallel with a utility's existing transmission and distribution facilities;

d. Is consistent with generating capacity as specified in ORS 757.300 and/or OAR 860-039-0010 as well as any other applicable regulations;

e. Is located on the same tract as the use(s) to which it is accessory and the power generating facility, tract, and use(s) are all under common ownership and management.

See "Non-Commercial/Stand Alone Power Generating Facility", "Commercial Power Generating Facility" and "Small Scale Commercial Power Generating Facility" for additional definitions related to energy production.

Non-Commercial/Stand Alone Power Generating Facility:

a. Generates energy using means listed in ORS or OAR such as solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones which allow "Farm Use" and 215.283(1)(r) in the Exclusive Farm Use zone;

b. Is intended to provide all of the generator's requirements for energy for the tract or the specific lawful accessory use that it is connected to;

c. Operates as a standalone power generator not connected to a utility grid; and

d. Is located on the same tract as the use(s) to which it is accessory and the power generating facility, tract, and use(s) are all under common ownership and management.

See "Net Metering Power Facility", "Commercial Power Generating Facility", and "Small Scale Commercial Power Generating Facility" for additional definitions related to energy production.

Non-Resource Zones - Zones within the jurisdiction of this ordinance that are not protected by either Oregon Land Use Planning Goal 3, Agricultural Lands or Goal 4, Forest Lands.

OWRD - Oregon Water Resources Department.

Planning Commission - Wasco County Planning Commission.

Planning Department - Wasco County Planning and Development Department.

Power - The rate at which work is performed or energy is converted.

~~Prevailing Wind Direction - Within 45 degrees of the direction from which wind flows for at least 20 percent of the year based on at least one year's site-specific recorded wind data.~~

Related or Supporting Facilities to a Commercial Power Generating Facility - Any structure, proposed to be constructed or substantially modified in connection with the construction of a commercial power generating facility, including associated transmission lines, power collector lines, substations connected to the power generating facility, meteorological towers (not including meteorological towers applied for independent of the commercial power generating facility), data collection & operating systems, construction staging & laydown areas, storage facilities, intake structures, road and rail access, barge basins, operation & maintenance buildings, and other accessory structures and buildings. A related or supporting facility is considered "in connection with the construction of the commercial power generating facility" if it would not be built or substantially modified BUT FOR construction or operation of the energy facility.

"Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps or any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

Resource Zones - Zones within the jurisdiction of this ordinance that are protected by either Oregon Land Use Planning Goal 3, Agricultural Lands or Goal 4, Forest Lands.

Road Department – Wasco County Public Works Department.

Shadow Flicker - The alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object. Shadow Flicker is not the sun seen through a spinning wind turbine rotor, nor what an individual might view moving through the shadows of a wind turbine.

~~Significant Interference With Wind Access - A ten (10) percent decrease in wind speed caused by an obstruction(s).~~

Small Scale Commercial Power Generating Facility (Utility Facility For The Purpose Of Generating Power) - A facility for the production of energy and its related components that:

a. Generates energy using means listed in ORS or OAR such as solar power, wind power, fuel cells, hydroelectric power, thermal power, geothermal power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones which allow "Farm Use" and 215.283(1)(r) in the Exclusive Farm Use zone; and

b. Is primarily intended to offset the customer-generator's requirements for energy but may produce more than they can consume.

See "Commercial Power Generating Facility", "Net Metering Power Facility" and "Non-Commercial/Stand Alone Power Generating Facility" for additional definitions related to energy production.

Solar Access - The right of a property owner to have sunlight shine onto the property owner's land.

Solar Energy Facility - A facility which converts solar energy for electricity generation, space heating, space cooling or water heating and which consists of solar panels, photovoltaic laminates, electrical lines, pipes, batteries, mounting brackets, frames, foundation and other appurtenances or devices necessary for the operation of the system wherever installed.

Sound Power is the acoustical energy emitted by the sound source, and is an absolute value. It is not affected by the environment.

Sound Pressure is a pressure disturbance in the atmosphere whose intensity is influenced not only by the strength of the source, but also by the surroundings and the distance from the source to the receiver. Sound pressure is what ears hear and what sound meters measure.

~~Total WECS Height - The height of a WECS measured from ground level to the highest vertical extension of a WECS.~~

Tower - monopole, freestanding, or guyed structure.

~~Transmission Facility - The conductors, lines, structures, buildings, corridor, and construction staging and assembly areas associated with the transmission of electricity from major power sources to the regional power grid and from the regional power grid to the local power distribution system. Such a facility operates at a current of 230 kilovolts (230kV) or less. Such a facility does not include electric power substations, switching stations, or generating facilities.~~ (Replaced by Electrical Transmission Facility)

Upwind - On the same side as the direction from which the prevailing wind is blowing – windward.

Utility Facility (Minor) (Non-Resource Zones Only) - Any minor facility owned or operated by a public, private or cooperative company for the local distribution or provision of sewer, water, gas, electricity (utility facility service lines), data, radio or telephone. Cell towers, any structure over 75' in height, and utility facilities that require a Goal 11 Exception constitute a "Utility Facility (Major)".

Utility Facility (Major) (Non-Resource Zones Only) - Any major facility owned or operated by a public, private or cooperative company for the generation, transmission, regional distribution or processing of its productions or for the disposal of cooling water, waste or by-products, and including, major trunk pipelines, water towers, sewage lagoons, sanitary landfills, structures over 75' in height, cell towers and similar facilities, and any utility facility that requires a Goal 11 Exception, but excluding electrical transmission facilities, & natural gas or petroleum product pipelines.

Utility Facilities Necessary for Public Service (EFU & Forest Zones Only) - ~~Facilities for providing communication, water, sewers or transportation and facilities accessory to energy facilities.~~ Unless otherwise specified, any facility owned or operated by a public, private or cooperative company for the transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including, major trunk pipelines, reservoirs (may require a Goal 3 or Goal 4 exception), dams & other hydroelectric facilities, water towers, sewage lagoons, cell towers, electrical transmission facilities (except transmission towers over 200' in height) including substations not associated with a commercial power generating facilities and other similar facilities. (Reviewed by Katherine Daniels with DLCD.

Utility Facility Service Lines - Utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

a. A public right of way;
b. Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
c. The property to be served by the utility.
d. In the case of non-EFU land, within a utility easement.

Watt - A unit of measure for the rate of energy conversion. Equal to 1 joule of energy per second.
Wind Access Rights – The right of a property owner to have unobstructed commercially viable wind available to the property owner's land.

Wind Energy Facility - A facility producing energy from wind and its related or supporting facilities. ~~A WECS or group of WECS including all parts of the system except transmission lines. Such a facility has a nominal electric generating capacity of 25 MW or less.~~

~~WECS (Wind Energy Conversion System) – A device that converts the kinetic energy in the wind into electric energy. The WECS includes all parts of the system except transmission lines.~~

~~WECS Site – The lot or lots upon which a WECS is situated. If abutting lots are used primarily for WECS, the WECS site encompasses all such abutting lots.~~

Wind Turbine – Equipment that converts energy from the wind into usable forms of energy (such as electricity) and then stores or transfers the energy. This equipment includes any base, blade, foundation, wind generator, nacelle, rotor, wind tower, transformer, vane, wire, inverter, batteris or other component used in the system except transmission lines.

Wind Turbine Horizontal Axis ~~WECS~~ - A wind turbine ~~WECS~~ on which the rotor axis substantially is parallel to the ground.

Wind Turbine Vertical Axis ~~WECS~~ - A wind turbine ~~WECS~~ where the rotor axis is vertical.

Wind Turbine Tower ~~WECS~~ - Subsystem of a wind turbine ~~WECS~~ that supports the rotor, or other collection device, above-ground.

~~Wind Farm – A cluster or array of three or more electrical WECS which are under the same ownership or management.~~

~~Wind Measurement Device – An instrument for measuring wind speed and/or direction, including the tower or pole upon which it is mounted.~~

CHAPTER 2 AMENDMENTS

SECTION 2.050 Pre-application Conference

A pre-application conference shall be required for all applications the director determines to be complex enough to require it. This shall include but not be limited to large scale commercial energy projects, subdivisions, planned unit developments, and reviews that involve numerous departments and agencies.

~~An applicant shall request a pre-application conference prior to submitting a request for a subdivision, planned unit development, conditional use, farm dwelling or site plan review for a home occupation.~~ The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Ordinance, provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, arrange such technical and design assistance as will aid the applicant, and to identify policies and regulations that create opportunities or pose significant constraints for the proposed development. ~~(Revised 5-93)~~

SECTION 2.060 Application/Completeness

~~Application for development approval shall be made pursuant to applicable sections of this Ordinance on forms provided by the Planning Director.~~

~~An application shall be considered complete when it contains the information required by these regulations, and addresses the appropriate criteria for review and approval of the request and is accompanied by the required fee, unless waived by the County Governing Body.~~

C. Complete Application - An application shall be considered complete when it is submitted in accordance with the format and upon such forms as may be established by the Director. A complete application is one which contains the information required to address the relevant standards of this ordinance and the applicable standards and requirements of the Comprehensive Plan as specified by this ordinance.

D. Incomplete Application - If an application is incomplete, the Director shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection C, Complete Application, upon receipt by the Director of:

1. All of the missing information;

2. Some of the missing information and written notice from the applicant that no other information will be provided; or

3. Written notice from the applicant that none of the missing information will be provided.

On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted the applicable information as described above.

SECTION 2.080 Notice

~~B. Notice of Administrative Action for the use listed in Sections 2.060(A) (1) and (9), shall be given as prescribed by subsection (A) (1) - (6) of this Section, with the exception that notice be given at least ten (10) days prior to a decision. (Revised 1-92, 5-93, 9-99)~~

CHAPTER 3 AMENDMENTS

SECTION 3.110 "F-1" FOREST ZONE

C. Uses Permitted Without Review: The following uses are permitted on lands designated "F-1" Forest Zone without review:
~~Permitted Uses~~

In the "F-1" Forest Zone, the following uses and activities and their accessory uses are permitted, on a legal parcel, subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:

RESOURCE USES

1. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals and disposal of slash.

2. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for the purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities. All uses proposed shall comply with the definition of auxiliary as defined in Section (B)(1) of this zone.

3. Farm use, as defined in Oregon Revised Statutes (ORS) 215.203(2).

4. Water intake facilities, canals and distribution lines for farm irrigation and ponds.

5. Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

6. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head. (Allowed but not previously listed)

7. Temporary emergency response camps and staging areas for personnel and equipment necessary for one or more responders to respond to wildland fire, flood, or other emergency event.

NATURAL RESOURCE USES

8. Uses to conserve soil, air, water quality and open space and provide for forest, wildlife, and fisheries resources ~~including accepted fish and wildlife practices~~.
that do not include development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to Section E(8) below.

UTILITIES & TRANSPORTATION

9. ~~Additional~~ Local distribution lines/Utility Facility Service Lines (e.g., electric telephone, natural gas) under 200' in height and accessory utility equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups.

10. Widening of roads within existing rights-of-way in conformance with the transportation element of the Wasco Comprehensive Plan including public roads and highway projects as described in ~~ORS 215.213 (l), (m) through (p) and~~ ORS 215.283 (l), (k) through (n).

COMMERCIAL USES

11. Private hunting and fishing operations without any lodging accommodations or any other physical development.

12. Minor Home occupation that:

    Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

    Does not serve clients or customers on-site;

    Does not produce odor, dust, glare, flashing lights or noise;

    Does not occupy more than 25 percent of the floor area of the dwelling; and

    Does not include the on-premises display or sale of stock in trade.

    Any Home Occupation that exceeds these standards is Major and subject to Section F(18) below.

D. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "F-1" Forest Zone subject to subsection I - Property Development Standards, Chapter 10 – Fire Safety Standards, as well as any other listed, referenced or applicable standards.

This review involves an evaluation by Planning and Development staff but only requires formal zoning approval if the use if required to meet building codes approval. If the use does not require formal zoning approval but that is requested by the applicant for future documentation they will be charged the appropriate ministerial review fee.

1. Temporary onsite structures which are auxiliary to and used during the term of a particular forest operation, as set forth in ORS 527.722. All structures proposed shall comply with the definition of temporary as defined in Section (B) of this zone.

2. Towers and communication facilities, ~~and fire stations~~ for forest fire protection. Pursuant to Chapter 4 – Supplemental Provisions - Section 4.070, these uses do not require a variance if they exceed 35 feet in height.

3. Alteration, restoration ~~Maintenance, repair~~ or replacement of a lawfully established ~~existing legally implemented~~ dwelling and/or accessory residential or non-residential building or structure (non-discretionary) subject to Sections I(1)(b)(1) - Addition, Modification or Relocation Setbacks & K(1) - Replacement Dwelling Standards (Dwellings only). Any replacement dwelling and/or accessory building and structure ~~which meets the requirements listed below~~ need not be replaced in kind but must be replaced in the same location. Replacement dwellings and/or buildings and structures in a different location are subject to E(3) below.~~and may be located on any part of the same lot or parcel so long as it complies, where practicable, with all applicable siting standards in the for dwellings Forest zone and fire protection standards in Chapter 10.~~

4. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

5. Uninhabitable structures accessory to fish and wildlife enhancement that does not include

development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to E(5) below.

E. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "F-1" Forest Zone subject to the subsection I - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Fire stations for forest fire protection. (This was split from D(4) above because Towers and Communication facilities can be reviewed ministerial but fire stations are subject to site plan review)

RESIDENTIAL USES

2. Alteration, restoration ~~Maintenance, repair~~ or replacement of a ~~existing legally implemented~~ lawfully established dwelling and/or accessory residential or non-residential building or structure (discretionary) on any part of the legal parcel subject to Sections I(1)(b)(1) - Addition, Modification or Relocation Setbacks, K(1) - Replacement Dwelling Standards (Dwellings only) & K(2) - Siting Requirements for Compatibility.

3. A building or structure accessory to a legally established residential use subject to ~~-~~Section K(2) Siting Requirements for Compatibility.. ~~applicable Development Standards, and Siting Requirements~~.This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

NATURAL RESOURCE USES

4. Uninhabitable structures accessory to fish and wildlife enhancement that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1). (This and the use below were added to ensure if development is placed in the floodplain they must be reviewed appropriately)

5. Uses to conserve soil, air, water quality and open space and provide for forest, wildlife, and fisheries resources that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

~~The rehabilitation, replacements, minor betterment, repair and improvements and other similar construction activities, not considered by the Approving Authority to have land use impact, in public parks, public playgrounds, and public recreational grounds~~.(This is not a listed use in either OAR or ORS)

ENERGY FACILITIES

6. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

~~Disposal site for solid waste ordered by DEQ per ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.~~(This is only applicable to Metro counties.)

MISCELLANEOUS USES

7. Partitions, Property Line Adjustments and Subdivisions, subject to Chapter 21 - Land Divisions.

F. Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses ~~and activities and their accessory buildings and uses~~ may be permitted on a legal parcel on lands designated "F-2" Forest Zone subject to ~~when authorized by the Approving Authority upon satisfactory demonstration of compliance with the general provisions and exceptions set forth by this Ordinance~~ Subsection G – Conditional Use Approval Standards Subsection I - Property Development Standards, Chapter 5 – Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced, or applicable standards.

RESIDENTIAL USES

1. Temporary Hardship Dwelling. A mobile home in conjunction with an existing legally implemented dwelling as a temporary use, subject to Chapter 8 - Temporary Use Permit – Section 8.070, for the term of a hardship suffered by the existing resident or a relative as defined in 215.283. (Allowed but not previously listed. There are two residences in the F-1 Zone so this use could occur)

ENERGY/UTILITY/SOLID WASTE DISPOSAL FACILITIES

2. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Commercial Power Generating Facility (Utility Facility for the Purpose of Generating Power) subject to Chapter 19 - Standards for Energy Facilities Section 19.030. A power generation facility shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 004 and must be reviewed and determined to comply with Chapter 19 standards and criteria for energy facilities and commercial energy facilities.

4. New electric transmission lines (Electrical Transmission Facilities) with right of way widths of up to 100 feet as specified in ORS 772.210, Local distribution Lines/Utility Facility Service Lines over 200' in height and Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030. New distribution lines (e.g. electrical, gas, oil, geothermal) with rights-of-way fifty (50) feet or less in width.

TRANSPORTATION

5. Public road and highway projects as described in ORS 21~~5.213 (2)(q) through (s) and~~ ORS 215.283 (2)(p) through (r).

COMMERCIAL USES

6. Major Home occupations subject to ~~Section 20.060~~ Chapter 20 - Site Plan Review - Section 20.090. Construction of a structure that would not otherwise be allowed in the zone is not permitted.

G. Conditional Use Approval Standards

~~In addition to the general standards and conditions that may be attached to the approval of a conditional use as provided by Chapter 5 of this Ordinance and Section (H) and (I) of this zone,~~ The following review

criteria shall apply to conditional uses applied for in subsection (FD) of this zone:

H. Prohibited Uses - All other uses not listed which are not determined to be similar uses as provided in Section 4.010 of this Ordinance.

I. General Development Standards

1. Setbacks

a. New Buildings and Structures: No structure other than a fence, sign, road or retaining wall less than four (4) feet in height shall be located closer than forty (40) feet from the right-of-way of a public road and all other property lines. Dwellings and structures accessory to dwellings shall also meet all siting standards and setbacks listed for dwellings or structures in the F-2 zone.

b. Additions, modifications or relocation of existing buildings and structures shall comply with the setback standards in a. above.

(1) Dwellings: The proposed addition modification or relocation shall not result in nonconformity or greater nonconformity to property line setbacks or resource buffer requirements unless the addition will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would place a relocated dwelling or extend an existing dwelling into or further toward the property line or resource, or expand an existing dwelling parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria. The provisions of Chapter 13, Nonconforming Uses, Buildings and Lots are not applicable to replacement dwellings.

(2) Buildings and Structures other than Dwellings: The proposed addition, modification or relocation shall not result in nonconformity or greater nonconformity to property line setbacks or resource buffer requirements. If the building or structure currently conforms to all setback standards and the proposal would result in non-conformity a Chapter 6 or 7 variance will be required. If the building or structure currently does not conform to all setback standards and the proposal would increase the non-conformity it shall be subject to the applicable provisions of Chapter 13, Nonconforming Uses, Buildings and Lots.

c. Waterways

(1) Resource Buffers: All bottoms of foundations of permanent structures, or similar permanent fixtures shall be setback from the high water line or mark, along all streams, lakes rivers, or wetlands.

(a) A minimum distance of one hundred (100) feet when measured horizontally at a right angle for all waterbodies designated as fish bearing by any federal, state or local inventory.

(b) A minimum distance of fifty (50) feet when measured horizontally at a right angle for all waterbodies designated as non fish bearing by any federal, state or local inventory.

(c) A minimum distance of twenty five (25) feet when measured horizontally at a right angle for all waterbodies (seasonal or permanent) not identified on any federal, state or local inventory.

(d) If the proposal does not meet these standards it shall be subject to subection b

above - Additions or Modifications to Existing Structures, above.

(e) The following uses are not required to meet the waterway setbacks, however they must be sited, designed and constructed to minimize intrusion into the riparian area to the greatest extent possible:

(i) Fences;

(ii) Streets, roads, and paths;

(iii) Drainage facilities, utilities, and irrigation pumps;

(iv)Water-related and water-dependent uses such as docks and bridges;

(v) Forest practices regulated by the Oregon Forest Practices Act;

(vi)Agricultural activities and farming practices, not including the construction of buildings, structures or impervious surfaces; and

(vii)Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

2. Height - Maximum height for all structures shall be thirty-five (35) feet. Height is measured from average grade.

~~Stream or Lake Buffers - All structures, or similar permanent fixtures (except hydroelectric facilities) shall be set back from the high water line or mark along all streams or lakes a minimum distance of one hundred (100) feet when measured horizontally at a right angle.~~

3. Floodplain: Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

4. Signs - Signs shall not extend over a public right-of-way or project beyond the property line.

   a. Signs shall not be illuminated or capable of movement.

   b. Signs shall be limited to twelve (12) square feet in area and shall describe only uses permitted and conducted on the property on which the sign is located.

   c. Signs advertising the sale or rental of the premise and temporary in nature are permitted provided the sign is erected no closer than ten (10) feet from right-of-way of public road.

5. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review when and if necessary.

J. Parcel Size Standards - The minimum lot or parcel size shall be 80 acres. The following exceptions may apply:

K. Additional Standards

(~~3) Replacement of a legally established dwelling in a new location will be allowed and the~~

~~applicant will be required to meet all applicable~~

~~(a) General Development Standards,~~
~~(b) Siting Requirements for Compatibility,~~

~~Chapter 13, Non conforming uses, buildings and lots, is not applicable to replacement of a dwelling described in this section. A temporary use permit need not be sought in order to live in the existing dwelling while the replacement dwelling is being constructed as long as removal, demolition, or conversion of the original dwelling is completed in accordance with time limits set above.~~ (This has been relocated to setback section)

2. Siting Requirements for Compatibility of New Accessory Buildings and Structures or Replacement Dwellings and Accessory Buildings and Structures in a New Location: ~~The following siting criteria shall apply to all replacement dwellings in a new location, and structures in forest and agriculture/forest zones.~~ These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. Dwellings and structures shall be sited on the parcel so that:

SECTION 3.120 "F-2" FOREST ZONE

C. Uses Permitted Without Review: The following uses are permitted on lands designated "F-2" Forest Zone without review:
~~Permitted Uses~~
~~In the "F-2" Forest Zone, the following uses and activities and their accessory buildings and uses are permitted on a legal parcel subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

RESOURCE USES

1. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals and disposal of slash.

2. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for the purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities. All uses proposed shall comply with the definition of auxiliary as defined in Section (B)(1) of this zone.

3. Farm use as defined in Oregon Revised Statutes (ORS) 215.203(2).

4. Water intake facilities, canals and distribution lines for farm irrigation and ponds.

5. Exploration for mineral and aggregate resources as defined in ORS 517.

6. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head. (Allowed but not previously listed)

NATURAL RESOURCE USES

7. Uses to conserve soil, air, water quality and open space and to provide for forest, wildlife and fisheries resources that do not include development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to Section E(8) below.

UTILITIES & TRANSPORTATION

8. ~~Additional~~ Local Distribution Lines/Utility Facility Service Lines (e.g., electric telephone, natural gas) under 200' in height and accessory utility equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups.

9. Widening of roads within existing rights-of-way in conformance with the transportation element of the Wasco Comprehensive Plan including public roads and highway projects as described in ~~ORS 215.28 (l), (m) through (p) and~~ ORS 215.283 (1), (k) through (n).

COMMERCIAL USES

10. Private hunting and fishing operations without any lodging accommodations or any other physical development.

11. Minor Home occupation that:

    a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

    b. Does not serve clients or customers on-site;

    c. Does not produce odor, dust, glare, flashing lights or noise;

    d. Does not occupy more than 25 percent of the floor area of the dwelling; and

    e. Does not include the on-premises display or sale of stock in trade.

    Any Home Occupation that exceeds these standards is Major and subject to Section F(25) below.

12. An outdoor mass gathering as defined in ORS 433.735 (assembly of more than 3,000 people reasonably expected to continue for more than 24 consecutive hours but less than 120 hours within any three month period and which is held primarily in open spaces and not in any permanent structure) OR other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period. NOTE: A gathering described above is not subject to a land use decision or land use permitting. A Permit is required for outdoor mass gathering. Permit Application, notice, and fee, requirements are outlined in ORS 433.750-.755, to protect public health and safety.

1. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "F-2" Forest Zone subject to subsection I - Property Development Standards, Chapter 10 – Fire Safety Standards, as well as any other listed, referenced or applicable standards.

This review involves an evaluation by Planning and Development staff but only requires formal zoning approval if the use if required to meet building codes approval. If the use does not require formal zoning approval but that is requested by the applicant for future documentation they will be charged the appropriate ministerial review fee.

6. Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation, as set forth in ORS 527.722. All structures proposed shall comply with the definition of temporary as defined in Section (B) of this zone.

7. Towers and communication facilities ~~and fire stations~~ for forest fire protection. Pursuant to Chapter 4 – Supplemental Provisions - Section 4.070, these uses do not require a variance if they exceed 35 feet in height.

8. Alteration, restoration ~~Maintenance, repair~~ or replacement of a lawfully established ~~existing legally implemented~~ dwelling and/or accessory residential or non-residential building or structure (non-discretionary) on any part of the legal parcel subject to Sections I(1)(b)(1) - Addition, Modification or Relocation Setbacks & K(1) - Replacement Dwelling Standards (Dwellings only). Any replacement dwelling and/or accessory building and structure ~~which meets the requirements listed below~~ need not be replaced in kind but must be replaced in the same location. Replacement dwellings and/or buildings and structures in a different location are subject to E(3) below.~~and may be located on any part of the same lot or parcel so long as it complies, where practicable, with all applicable siting standards in the for dwellings Forest zone and fire protection standards in Chapter 10.~~

9. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

10. Uninhabitable structures accessory to fish and wildlife enhancement that does not include development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to E(7) below.

11. Dwelling for Caretaker in a Public Park or Fish Hatchery. A single family dwelling may be authorized within the Forest Zones for a caretaker's residence when the residence will be located on land dedicated and developed as a public park, and the residence is to be occupied by a caretaker and caretaker's family only.

2. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "F-2" Forest Zone subject to the subsection I - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

RESOURCE USES

8. Fire stations for forest fire protection. (This was split from D(4) above because Towers and Communication facilities can be reviewed ministerial but fire stations are subject to site plan review)

RESIDENTIAL USES

9. Alteration, restoration ~~Maintenance, repair~~ or replacement of a ~~existing legally implemented~~ lawfully established dwelling and/or accessory residential or non-residential building or structure (discretionary) on any part of the legal parcel subject to Sections I(1)(b)(1) - Addition, Modification or Relocation Setbacks, K(1) - Replacement Dwelling Standards (Dwellings only) & K(4) - Siting Requirements for Compatibility.

10. Lot of Record Dwelling subject to Section K(2) - Lot of Record Test & K(4) - Siting Requirements for Compatibility.

11. Large Tract Dwelling subject to Section K(3) - Large Tract Test& K(4) - Siting Requirements for Compatibility.

12. A building or structure accessory to a legally established residential use subject to ~~-~~Section K(4) Siting Requirements for Compatibility.. ~~- applicable Development Standards, and Siting Requirements~~.This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

NATURAL RESOURCE USES

13. Uninhabitable structures accessory to fish and wildlife enhancement that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1). (This and the use below were added to ensure if development is placed in the floodplain they must be reviewed appropriately)

14. Uses to conserve soil, air, water quality and open space and to provide for forest, wildlife and fisheries resources that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

    ~~The rehabilitation, replacements, minor betterment, repair and improvements and other similar construction activities, not considered by the Approving Authority to have land use impact, in public parks, public playgrounds, and public recreational grounds~~.(This is not a listed use in either OAR or ORS)

ENERGY FACILITIES

15. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

    ~~Disposal site for solid waste ordered by DEQ per ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.~~(This is only applicable to Metro counties.)

MISCELLANEOUS USES

16. Partitions, Property Line Adjustments and Subdivisions, subject to Chapter 21 - Land Divisions.

F. Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses ~~and activities and their accessory buildings and uses~~ may be permitted on a legal parcel on lands designated "F-2" Forest Zone subject to ~~when authorized by the Approving Authority upon satisfactory demonstration of compliance with the general provisions and exceptions set forth by this Ordinance~~

Subsection G – Conditional Use Approval Standards Subsection I - Property Development Standards, Chapter 5 – Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced, or applicable standards.

ENERGY/UTILITY/SOLID WASTE DISPOSAL FACILITIES

Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

Commercial Power Generating Facility (Utility Facility for the Purpose of Generating Power) subject to Chapter 19 - Standards for Energy Facilities Section 19.030. A power generation facility shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 004 and must be reviewed and determined to comply with Chapter 19 standards and criteria for energy facilities and commercial energy facilities.

New electric transmission lines (Electrical Transmission Facilities) with right of way widths of up to 100 feet as specified in ORS 772.210, Local distribution Lines/Utility Facility Service Lines over 200' in height and Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030. New distribution lines (e.g. electrical, gas, oil, geothermal) with rights-of-way fifty (50) feet or less in width.

TRANSPORTATION

Public road and highway projects as described in ~~ORS 215.213 (2)(q) through (s) and~~ ORS 215.283 (2)(p) through (r).

PARKS/PUBLIC/QUASI-PUBLIC FACILITIES

Parks and campgrounds. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer, yurt, or recreational vehicle. Campgrounds authorized under this section are to be located at a site or contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. The campground shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. A private campground shall be subject to the Section K(5) – Additional Standards below.

Public parks ~~and campgrounds~~ subject to OAR 660-034-0035 or 660-034-0040, whichever is applicable.

COMMERCIAL USES

Major Home occupations subject to ~~Section 20.060~~ Chapter 20 - Site Plan Review - Section 20.090. Construction of a structure that would not otherwise be allowed in the zone is not permitted.

G. Conditional Use Approval Standards

~~In addition to the general standards and conditions that may be attached to the approval of a conditional use as provided by Chapter 5 of this Ordinance,~~ the following review criteria shall apply to a conditional use applied for in subsection (~~D~~F) of this Section:

H. Prohibited Uses - All other uses not listed which are not determined to be similar uses, as provided in Section 4.010 of this Ordinance.

I. ~~General~~ Property Development Standards

2. Setbacks

a. New Buildings and Structures: No structure other than a fence, sign, road or retaining wall less than four (4) feet in height shall be located closer than forty (40) feet from the right-of-way of a public road and all other property lines. Dwellings and structures accessory to dwellings shall also meet all siting standards and setbacks listed for dwellings or structures in the F-2 zone.

b. Additions, modifications or relocation of existing buildings and structures shall comply with the setback standards in a. above.

(1) Dwellings: The proposed addition modification or relocation shall not result in nonconformity or greater nonconformity to property line setbacks or resource buffer requirements unless the addition will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would place a relocated dwelling or extend an existing dwelling into or further toward the property line or resource, or expand an existing dwelling parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria. The provisions of Chapter 13, Nonconforming Uses, Buildings and Lots are not applicable to replacement dwellings.

(2) Buildings and Structures other than Dwellings: The proposed addition, modification or relocation shall not result in nonconformity or greater nonconformity to property line setbacks or resource buffer requirements. If the building or structure currently conforms to all setback standards and the proposal would result in non-conformity a Chapter 6 or 7 variance will be required. If the building or structure currently does not conform to all setback standards and the proposal would increase the non-conformity it shall be subject to the applicable provisions of Chapter 13, Nonconforming Uses, Buildings and Lots.

c. Waterways

(1) Resource Buffers: All bottoms of foundations of permanent structures, or similar permanent fixtures shall be setback from the high water line or mark, along all streams, lakes rivers, or wetlands.

(a) A minimum distance of one hundred (100) feet when measured horizontally at a right angle for all waterbodies designated as fish bearing by any federal, state or local inventory.

(b) A minimum distance of fifty (50) feet when measured horizontally at a right angle for all waterbodies designated as non fish bearing by any federal, state or local inventory.

(c) A minimum distance of twenty five (25) feet when measured horizontally at a right angle for all waterbodies (seasonal or permanent) not identified on any federal, state or local inventory.

(d) If the proposal does not meet these standards it shall be subject to subection b

above - Additions or Modifications to Existing Structures, above.

(e) The following uses are not required to meet the waterway setbacks, however they must be sited, designed and constructed to minimize intrusion into the riparian area to the greatest extent possible:

(i) Fences:

(ii) Streets, roads, and paths;

(iii) Drainage facilities, utilities, and irrigation pumps;

(iv)Water-related and water-dependent uses such as docks and bridges;

(v) Forest practices regulated by the Oregon Forest Practices Act;

(vi)Agricultural activities and farming practices, not including the construction of buildings, structures or impervious surfaces; and

(vii)Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

2. Height - Maximum height for all structures shall be thirty-five (35) feet. Height is measured from average grade.

~~Stream and Lake Buffers - All structures, or similar permanent fixtures (except hydroelectric facilities) shall be set back from the high water line or mark along all streams or lakes a minimum distance of one hundred (100) feet when measured horizontally at a right angle.~~

3. Floodplain: Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

2. Signs - Signs shall not extend over a public right-of-way or project beyond the property line.

a. Signs shall not be illuminated or capable of movement.

b. Signs shall be limited to twelve (12) square feet in area and shall describe only uses permitted and conducted on the property on which the sign is located.

c. Signs advertising the sale or rental of the premise and temporary in nature are permitted provided the sign is erected no closer than ten (10) feet from right-of-way of public road.

3. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review when and if necessary.

J. Parcel Size Standards - The minimum lot or parcel size shall be 80 acres. The following exceptions may apply:

K. Additional Standards

1. Replacement Dwelling standards

b. A replacement dwelling shall be subject to the following siting ~~and fire protection~~ standards:

~~(3) Replacement of a legally established dwelling in a new location will be allowed and the applicant will be required to meet all applicable~~

~~(a) General Development Standards,~~
~~(b) Siting Requirements for Compatibility,~~

~~Chapter 13, Non conforming uses, buildings and lots, is not applicable to replacement of a dwelling described in this section. A temporary use permit need not be sought in order to live in the existing dwelling while the replacement dwelling is being constructed as long as removal, demolition, or conversion of the original dwelling is completed in accordance with time limits set above.~~ (This has been relocated to setback section)

4. Siting Requirements for Compatibility of New Dwellings and Accessory Buildings and Structures or Replacement Dwellings and Accessory Buildings and Structures in a New Location: ~~The following siting criteria shall apply to all new dwellings and structures in forest and agriculture/forest zones~~. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. Dwellings and structures shall be sited on the parcel so that:

a. Site Selection for Least Impact - Siting shall result in the least possible impact on nearby or adjoining forest or agricultural lands.

(1) Siting shall ensure that forest operations and accepted farming practices will not be curtailed or impeded.

(2) Siting shall minimize the amount of forest or farm land removed from production for access roads, service corridors, the dwelling and accessory structures.

(3) Siting shall minimize the risks associated with wildfire by imposing fire prevention standards applicable to the Forest zone.

SECTION 3.210 EXCLUSIVE FARM USE ZONE

Purpose: The purpose of the "A-1" Exclusive Farm Use Zone is to preserve and maintain agricultural lands for farm use consistent with historical, existing and future needs, including economic needs that pertain to the production of agricultural products. And to permit the establishment of only those uses that are compatible with agricultural activities consistent with the applicable Statutory and Administrative Rule provisions of ORS Chapter 215 and OAR Chapter 660, Division 33.

Uses, buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "A-1" Exclusive Farm Use zone shall comply with the following regulations. If these regulations are preempted by mandatory ORS's or OAR's those shall be applied directly pursuant to ORS 197.646.

Uses Permitted Without Review: The following uses ~~may be allowed~~ are permitted on lands designated "A-1" Exclusive Farm Use Zone without review.

NATURAL RESOURCE USES

1. Creation, restoration or enhancement of wildlife habitat and wetlands that do not include development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to Section D(11) below.

UTILITY/DISPOSAL FACILITIES

10. Utility facility service lines under 200' in height: Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

COMMERCIAL USES

14. Minor Home occupation that:

    Any Home Occupation that exceeds these standards is Major and subject to Section E(~~27~~28) below.

B. Uses Permitted Subject to Ministerial/Type I Review ~~Property Development Standards~~: The following uses ~~and activities may be allowed~~ are permitted on a legal parcel on lands designated "A-1" Exclusive Farm Use Zone subject to ~~a Type I Review subject to the~~ Subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards and any other listed, referenced or applicable standards.

This review involves an evaluation by Planning and Development staff but only requires formal zoning approval if the use if required to meet building codes approval. If the use does not require formal zoning approval but that is requested by the applicant for future documentation they will be charged the appropriate ministerial review fee.

1. Agricultural Structure: Buildings and structures other than dwellings customarily provided in conjunction with farm use subject to meeting the definition in Section 1.090, Definitions. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

2. Accessory Structure: Buildings and structures accessory to a legally established dwelling not provided in conjunction with farm use subject to meeting the definition in Section 1.090, Definitions. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

3. A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as an historic property and is listed on the National Register of Historic Places. The application shall include a Farm Management Plan documenting how the replacement dwelling will be used in conjunction with a farm use.

4. Alteration, restoration relocation, or replacement of a lawfully established dwelling and/or accessory residential or non-residential building or structure (non-discretionary) on any part of the legal parcel, subject to Sections F(1)(a)(3) - Addition, Modification or Relocation Setbacks and J(3) - Replacement Dwellings (Dwellings only).

5. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power

generating facilities may be allowed under this provision if allowed by Section 19.030.

C. Uses Permitted Subject to Standards/Type II Review: The following uses ~~and activities~~ may be permitted ~~allowed subject to a Type II Review~~ on a legal parcel on lands designated "A-1" Exclusive Farm Use Zone subject to the subsection F - Property Development Standards, subsection H - Agricultural Protection, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

COMMERCIAL USES RELATED TO FARM USE

3. A winery subject to Section J(6) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~:

4. A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 subject to the ~~applicable provisions of Chapter 20, Site Plan Review~~ following:

5. Farm stands subject to Section J(12) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~:

RESIDENTIAL USES

10. Alteration, restoration relocation, or replacement of a lawfully established dwelling (discretionary) and/or accessory residential or non-residential building or structure on any part of the legal parcel subject to Sections F(1)(a)(3) - Addition, Modification or Relocation Setbacks and J(3) - Replacement Dwellings (Dwellings only).

NATURAL RESOURCE USES

11. Creation, restoration or enhancement of wetlands that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

UTILITY/ENERGY FACILITIES

Pursuant to Chapter 4 – Supplemental Provisions - Section 4.070, ~~General Exceptions to Building Height Requirements,~~ these uses do not require a variance if they exceed 35 feet in height.

12. Utility facilities "necessary" for public service, including wetland waste treatment systems and Electrical Transmission Facilities under 200 feet in height, but not including commercial utility facilities for the purpose of generating electrical power for public use by sale, or Electrical Transmission Facilities ~~transmission towers~~ over 200 feet in height, subject to Section J(8), Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

~~A Transmission Facility under 200 feet in height subject to J(8)(a)(1) – (6) below and the applicable Subject to Standards criteria of Chapter 19.~~ (Electrical Transmission is divided into three categories. (1) Distribution/Utility Facility Service Lines under 200' in height which are allowed without review; (2) Related and accessory transmission which are allowed accessory to a new energy generation facility if owned by the developer and are not a separate use; and (3) New transmission facilities. ORS 215.283 only allows Electrical Transmission Facilities over 200' to be reviewed as a CUP. So, while other zones require all Electrical Transmission Facilities to be

reviewed as a CUP, this zone must be consistent with ORS.

13. ~~A Wind Facility, Wind Energy Conversion System (WECS) or Wind Measurement Device pursuant to the applicable Subject to Standards criteria of Chapter 19.~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

    ~~A Hydroelectric Facility pursuant to the applicable Subject to Standards criteria of Chapter 19.~~ (Hydro is now included in new definition of "Utility Facility Necessary for a Public Use. Chapter 19 states it is not subject to the standards in that chapter.)

PARKS/PUBLIC/QUASI-PUBLIC FACILITIES

14. Model Aircraft take-off and landing sites including such buildings or facilities as may be reasonably necessary and the following: ~~subject to the following standards and the applicable standards of Chapter 20, Site Plan Review~~:

15. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, except that no such use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660 Division 4, and further that no such use may be authorized on high value farmland. Existing facilities wholly within a farm zone may be maintained, enhanced or expanded on the same tract. ~~This use is subject to the applicable standards of Chapter 20, Site Plan Review.~~

MISCELLANEOUS USES

16. Partitions, Property Line Adjustments and Subdivisions, subject to Chapter 21 – Land Divisions.

17. On-site filming and related accessory uses may be conducted provided the use does not exceed 45 days, subject to Section J(15) - Additional Standards below. On-site filming in excess of 45 days is a conditional use.

E. Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses ~~and activities~~ may be permitted ~~allowed subject to a Type II or Type III Review~~ on a legal parcel designated "A-1" Exclusive Farm Use subject to subsection F - Property Development Standards, subsection H - Agricultural Protection, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced, or applicable standards.

RESOURCE USES

4. Aggregate: Operations conducted for the mining, crushing or stockpiling of mineral, aggregate and other subsurface resources subject to Section J(9) - Additional Standards below, Section 3.800, Mineral & Aggregate Overlay ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

5. Processing, as defined by ORS 517.750, of aggregate into asphalt or Portland cement, except that asphalt production shall not be permitted within two miles of a producing orchard or vineyard, which is planted as of the date that the application for asphalt production is filed, and subject to

WCLUDO Section 3.800, Mineral and Aggregate Overlay ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

6. Processing of other mineral resources and other subsurface resources.

7. Mining and processing of geothermal resources as defined in ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted in Section B(5) above ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

COMMERCIAL USES RELATED TO FARM USE

8. Commercial activities in conjunction with farm use as defined in ORS 215.203, including the processing of farm crops into biofuel not otherwise allowed in the definition of farm use or by Section D(4) above, subject to Section J(16) - Additional Standards below ~~and the applicable standards of Chapter 20, Site Plan Review~~.

9. Farm ranch recreation including but not limited to hunting preserves, fishing, fly fishing and tying clinics, trap and skeet range, archery range, ranch skills, horsemanship, equine eventing, habitat improvement, wildlife viewing, and outdoor schools in conjunction with a commercial farming operation subject to Section J(7) - Additional Standards below ~~and Sections 20.010 – 20.090 of Chapter 20 - Site Plan Review~~.

RESIDENTIAL USES

10. Non-Farm Dwelling: One single family dwelling not provided in conjunction with farm use, subject to Section J(1) - Additional Standards, below.

11. A temporary medical hardship dwelling for the term of hardship suffered by the existing resident or relative subject to Chapter 8 Temporary Use Permit - Section 8.070, ~~Temporary Use of a Mobile Home (Family Hardship)~~:

12. Residential home which means a residential treatment or training or adult foster home in an existing dwelling licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related (or as further defined in ORS 197.660) ~~subject to the applicable standards of Chapter 20, Site Plan Review~~.

ENERGY/UTILITY/SOLID WASTE DISPOSAL FACILITIES

13. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

14. ~~Commercial utility facilities (Wind, Hydroelectric or Other) for the purpose of generating power for public use by sale. This use is subject to the applicable provisions of Chapter 19, Standards for Energy Facilities and Commercial Energy Facilities and Chapter 20, Site Plan Review.~~ Commercial Power Generating Facility (Utility Facility for the Purpose of Generating Power) subject to Section 19.030.

A wind power generation facility shall also be subject to Section J(17), Additional Standards below.

Except for wind facilities, transmission lines or pipelines, unless otherwise allowed by state regulations, the energy facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4, or 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4 and ORS 197.732.

15. ~~Transmission towers greater than 200 feet in height and transmission facilities pursuant to the applicable provisions of Chapter 19, Standards for Energy Facilities and Commercial Energy Facilities~~. Electrical Transmission Facilities and Utility Facility Lines greater than 200' in height, and Natural Gas or Petroleum Product Pipelines subject to Section J(8) - Additional Standards below and Chapter 19 - Standards for Energy Facilities - Section 19.030.

16. A site for disposal of solid waste approved by a city or county governing body and for which a permit has been granted by the Department of Environmental Quality under ORS 459.245, including the equipment, facilities, and building necessary for its operation, except that such uses are prohibited on high value farmland ~~subject to the applicable provisions of Chapter 20, Site Plan Review~~.

17. Composting facilities (excluding non-green feedstocks) for which a permit has been granted by DEQ under ORS 459.245 and OAR 340-96-020 subject to Section J(10) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

PARKS/PUBLIC/QUASI-PUBLIC FACILITIES

18. Fire service facilities providing rural fire protection services ~~subject to the applicable standards of Chapter 20, Site Plan Review~~.

19. Community centers owned by a government agency or a nonprofit organization and operated primarily by and for residents of the local rural community ~~subject to the applicable standards of Chapter 20, Site Plan Review~~.

20. Parks and playgrounds A public park includes only the uses specified under OAR 660-034-0035 or 660-034-0040 whichever is applicable and may only be established subject to ~~the applicable provisions of Chapter 20, Site Plan Review and~~ ORS 195.120,

21. Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210 ~~subject to the applicable provisions of Chapter 20, Site Plan Review~~.

22. Any gathering subject to review by a county planning commission under the provisions of ORS 433.76. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period ~~subject to the applicable provisions of Chapter 20, Site Plan Review~~.

23. Public or private schools for kindergarten through grade 12, including all building essential to the operation of a school, primarily for residents of the rural area in which the school is located, subject to ~~Chapter 20, Site Plan Review and~~ the following:

COMMERCIAL USES

24. Major Home occupation subject to ~~the applicable provisions of~~ Chapter 20 - Site Plan Review -

Section 20.090. Construction of a structure that would not otherwise be allowed in the zone is not permitted.

25. Home Occupation with Room and Board or (Bed and Breakfast) arrangements in an existing residence, but may not be sited adjacent to or on high value lands within two (2) miles of the National Scenic Area Boundary subject to ~~the applicable provisions of Chapter 20, Site Plan Review and~~ the following.

26. Home Occupation to Host Commercial Events subject to Chapter 20 – Site Plan Review - Section 20.100: The commercial events are associated with a farm use, lawfully approved winery, bed and breakfast or farm ranch recreation and includes weddings, receptions, parties, bicycle races confined to the subject parcel(s) and other small-scale gatherings hosted for a fee that are incidental and subordinate to the primary use of the parcel. ~~The use is subject to the applicable provisions of Chapter 20, Site Plan Review.~~ Construction of a structure that would not otherwise be allowed in the zone is not permitted.

27. Dog Kennels, except that such uses are prohibited on high value farmland, ~~subject to the applicable provisions of Chapter 20, Site Plan Review~~.

28. Private parks, playgrounds, and campgrounds, as defined in Section 1.090, Definitions, except that such uses are prohibited on high value farmland, subject to Section J(14) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

29. Golf courses: A 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course except that such uses are prohibited on high value farmland, as defined in ORS 195.300, subject to Section J(13) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

30. Operations for the extraction and bottling of water ~~subject to applicable provisions of Chapter 20, Site Plan Review~~.

31. On-site filming if the activity exceeds 45 days on any site within a one-year period or involves the erection of sets that would remain in place for longer than 45 days. These activities may include administrative or security functions and may include the use of campers, trailers, or similar temporary facilities. This use is also subject to Section J(15) - Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

F. Property Development Standards

(3) Additions, modifications or relocation of existing structures shall comply with all EFU setback standards. Any proposal that cannot meet these standards is subject to the following:

(a) Dwellings: The proposed addition modification or relocation shall not result in nonconformity or greater nonconformity to property line setbacks or resource buffer requirements unless the addition will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would place a relocated dwelling or extend an existing dwelling into or further toward the property line or resource, or expand an existing dwelling parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria. The provisions of Chapter 13, Nonconforming Uses, Buildings and Lots are not applicable to replacement dwellings.

b. Waterways

(2) Floodplain: Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

3. Alteration, restoration, relocation or replacement of a lawfully established dwelling:

f. In the case of deferred replacement:

a. The existing dwelling is removed or demolished within 90 days after the deferred replacement permit is issued. If the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void;

b. Construction of the replacement dwelling may occur at any time but may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant; and

c. The replacement dwelling must comply with all applicable siting requirements, building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.

5. Farm Dwelling:

b. Income Test (for Parcels Less than 160 acres) subject to the following and Subsection 3 below:

(6) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by the Chair of the Board of County Commissioners ~~Wasco County Judge~~;

SECTION 3.220 "F-F" FOREST-FARM(NON-RESOURCE)

A. Purpose: The purpose of the "F-F (10)" Forest-Farm (Non-Resource) zone is to permit low-density residential development in suitable locations while reducing potential conflicts with agriculture uses, forestry uses and open space. ~~those lands which have not been in commercial agriculture or timber production to be used for small scale, part-time farm or forest units by allowing residential dwellings in conjunction with a farm use while preserving open space and other forest uses.~~

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "F-F (10)" Forest-Farm (Non-Resource) zone shall comply with the following regulations.

(This zone was given non-resource determination by the Department of Land Conservation and Development Department in 1995. While it was not given a Goal 4 exception it was determined the area was committed to non-resource use. A more detailed description of this is located in the Comp Plan.)

B. Uses Permitted Without Review ~~Permitted Uses~~: The following uses ~~and activities~~ ~~and their accessory buildings and uses~~ are permitted on lands designated "F-F (10)" Forest-Farm(Non-Resource) zone without review ~~subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 - Fire Safety Standards~~

1. Farm use, as defined in ORS 215.203(2).

2. Forest use, including the propagation or harvesting of forest products.

~~The breeding, boarding and training of horses for profit~~. (This is now included in the definition of "Farm Use")

1. Utility Facilities (Minor)

2. Climbing and passing lanes within the right-of-way existing as of July 1, 1987. ~~(added 2-89)~~

3. Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result. ~~(added 2-89)~~

4. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed. ~~(added 2-89)~~

7. Minor Home occupation that:

   d. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;
   e. Does not serve clients or customers on-site;
   f. Does not produce odor, dust, glare, flashing lights or noise;
   g. Does not occupy more than 25 percent of the floor area of the dwelling; and
   h. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(10) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "F-F (10)" Forest-Farm (Non-Resource) zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, as well as any other listed, referenced or applicable standards.

This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

1. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

2. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

5. Public and private conservation areas and structures for the retention of water, soil, open space, forest or wildlife resources.

6. The rehabilitation, replacements, minor betterment, repair and improvements and other similar construction activities, not considered to have land use impacts, in public parks, playgrounds and recreational areas.

7. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous publicy-owned property utilized to support the operation and maintenance of public roads and highways. ~~(added 2-89)~~

~~Utility facilities necessary for public service~~.(Replaced by Utility Facility (Minor) and Utility Facility (Major))

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "F-F (10)" Forest-Farm(Non-Resource) zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. One single-family dwelling ~~and other buildings and accessory uses~~ provided in conjunction with a forest or farm use, including mobile home subject to Chapter 4 - Supplemental Provisions - Section 4.12~~6~~0 provided the following are met: ~~(Revised 1-92)~~

   a. The parcel is currently employed in a farm or forest use and there are no other dwellings located on the subject lot-of-record. ~~(Added 1-92)~~

   b. The parcel is currently enrolled in a farm or forest use tax deferral program by the Wasco County Assessor. ~~(Added 1-92)~~

2. ~~Energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

4. Planned Unit Developments (PUD) subject to Chapter 18 - Planned Unit Development.

5. Agricultural Produce Stand subject to ~~Chapter 20~~ the Farm Stand requirements of Section 3.210 - Exclusive Farm Use Zone. ~~(Revised 1-92)~~

E. Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following uses ~~and activities~~ may be permitted on a legal parcel on lands designated "F-F (10)" Forest-Farm(Non-Resource) zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.
~~and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in, Chapter 5,~~

~~Chapter 10 – Fire Safety Standards, and this Section:~~

RESIDENTIAL USES

1. A single-family dwelling, including mobile home, not provided in conjunction with a forest or farm use.

2. Additional single-family dwellings, including mobile homes, in conjunction with a commercial farm or forest use subject to income requirements in Section 3.210 - Exclusive Farm Use Zone. ~~D.2. or D.3. (amended 6-98).~~

ENERGY/UTILITY FACILITIES

3. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

4. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 9 - Standards for Energy Facilities - Section 19.030.

5. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

6. Utility Facilities (Major).

~~Solid waste disposal site as provided in ORS 215.283(2)(j).~~ (Included in Utility Facility Major)

~~Sanitary landfill.~~ (Included in Utility Facility Major)

COMMERICAL/AGRICULTURAL /INDUSTRIAL USES

10. Major Home occupations subject to Chapter 20 - Site Plan Review - Section 20.090.

11. Kennels.

12. Commercial activities that are in conjunction with farm use as defined in ORS 215.203, including the processing of farm crops into biofuel not otherwise allowed in the definition of farm use subject to the Commercial Activities in Conjunction with a Farm Use requirements of Section 3.210 - Exclusive Farm Use Zone.

13. Facilities to manufacture alcohol from farm or timber waste.

14. The propagation, cultivation, maintenance and harvest of aquatic species. ~~(added 2-89)~~

15. Exploration mining and processing of aggregate and other mineral resources or other subsurface resources subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

TRANSPORTATION

16. Personal-use airports for airplanes and helicopter pads, including associate hangar, maintenance and service facilities.

17. Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels. ~~(added 2-89)~~

18. Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels. ~~(added 2-89)~~

19. Improvement of public roads and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required, but not resulting in the creation of new land parcels. ~~(added 2-89)~~

F. Property Development Standards

1. Property Size - The minimum property size is ten (10) acres with a 330 foot minimum average lot width.

2. Lot Coverage - No more than ten percent (10%) of any lot or parcel may be occupied by non-farm or forest dwellings and their accessory buildings allowed by this section. ~~(added 2-89)~~

3. Setbacks - ~~In the "F-F (10)" zone~~ No structure other than a fence or sign shall be located closer than twenty-five (25) feet from the right-of-way of a public road (front yard), twenty-five (25) feet from side yard property lines and forty (40) feet from the rear yard property line.

7. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

8. Signs - Signs shall not extend over a public right-of-way or project beyond the property line.

9. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

10. Lighting - Outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways and the Columbia River. ~~(Added 5-93)~~

SECTION 3.230 "A-R" AGRICULTURAL-RECREATIONAL ZONE

A. Purpose: The purpose of the "A-R" Agricultural-Recreational zone is to provide areas for outdoor recreation and to allow controlled growth to continue in existing rural communities and rural exception areas. Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "A-R" Agricultural-Recreational zone shall comply with the following regulations:

B. Uses Permitted Without Review ~~Uses~~: The following uses ~~and activities~~ ~~and their accessory buildings and uses~~ are permitted on lands designated "A-R" Agricultural-Recreational zone without review. ~~subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Farm use, provided animals and fowl are properly caged or housed and proper sanitation is maintained.

2. Forest uses, including the propagation and harvesting of forest products.
3. Utility Facilities (Minor)
4. Minor Home occupation that:

   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;
   b. Does not serve clients or customers on-site;
   c. Does not produce odor, dust, glare, flashing lights or noise;
   d. Does not occupy more than 25 percent of the floor area of the dwelling; and
   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(1) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "A-R" Agricultural-Recreation zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. One single-family dwelling ~~on any legally created parcel,~~ including mobile homes at least eighteen (18) feet wide, subject to Chapter 4 - Supplemental Provisions - Section 4.126~~0~~0, ~~provided proper sanitation approval is obtained~~. (This is not needed because it is part of the review process)

      ~~Recreational vehicles provided such vehicles are not attached to the land and proper sanitation is maintained.~~ (Recreational Vehicles can meet the standard of a dwelling above if they choose to be reviewed as such. The definition of Recreational Vehicle provides specifics of how their placement is allowed and limited if they are not approved as a dwelling.)

   2. ~~Accessory structures customarily provided in conjunction with the primary use.~~ Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   3. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   4. Additions to, and replacement of, a lawfully established building or structure.

   5. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "A-R" Agricultural-Recreation zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Guest house subject to ~~standards in~~ Chapter 4 - Supplemental Provisions -Section 4.13~~7~~0.
2. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.
3. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions
4. Mobile home parks subject to ~~in accordance with~~ Chapter 16 – Mobile Home Parks ~~with a density that meets or exceeds the minimum lot size for the zone~~(this deleted language is included in the Chapter 16), and that is demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.
5. Recreational vehicle parks subject to ~~in accordance with~~ Chapter 17 – Recreational Vehicle Parks, ~~with a density that meets or exceeds the minimum lot size for the zone,~~ (Chapter 17 references Chapter 16 which includes the deleted language) and that is demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.
6. Dude ranches and hunting and fishing lodges, including overnight facilities in ~~accordance with Chapter 20 - Site Plan Review~~ and demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.
7. Youth/family camp demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community ~~(Added 9/97).~~
8. Parks, recreation areas, and facilities preserves and community or neighborhood centers ~~in accordance with Chapter 20 - Site Plan Review~~.
9. Any new commercial service, or retail use, permissible in this zone that will be located entirely within an existing, lawfully erected commercial building or structure. ~~(Consistent with Chapter 4)~~
10. Agricultural Produce Stand subject to ~~Chapter 20~~ the Farm Stand requirements of Section 3.210 - Exclusive Farm Use Zone. ~~(Revised 1-92)~~
    ~~Water supply and treatment facility~~.(This is now a Utility Facility (Major)

    ~~Sewage disposal and treatment facility.~~ .(This is now a Utility Facility (Major)

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following uses may be permitted on a legal parcel on lands designated "A-R" Agricultural Recreation zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well any other listed, referenced or applicable standards.

~~In the "A-R" Agricultural Recreational zone, the following uses and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in Chapter 5 – Conditional Use Review, Chapter 10 - Fire Safety Standards and this section:~~

1. Major Home Occupations, subject to chapter 20 - Site Plan Review - Section 20.090. ~~(added 2-89)~~

2. Small scale low impact retail commercial uses provided the following conditions are met:

3. Bed and breakfast inns. ~~(added 2-89)~~

4. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.~~ Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating

facilities may be allowed under this provision if allowed by Section 19.030.

5. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities - Section 19.030,

6. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

7. ~~Utility facilities necessary for public service.~~ Utility Facilities (Major).

8. Auditoriums, outdoor stages and entertainment areas.

9. Golf courses (except commercial driving ranges, miniature courses or similar courses operated as a business).

10. Airports.

11. Exploration, mining and processing of aggregate and other mineral resources or other subsurface resources, subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

F. Property Development Standards

Stream or Lake Setbacks -

a. Pine Hollow and Rock Creek Reservoirs are both subject to Section 3.900 - Reservoir Overlay Zone ~~the Environmental Protection District (EPD) provisions of~~ (EPD-6).

b. All structures, or similar permanent fixtures (except hydroelectric facilities and docks), proposed in areas not mapped in the EPD-6, shall be set back from the high water line or mark along any streams or lakes a minimum distance of fifty (50) feet when measured horizontally at a right angle.

2. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

3. Signs - Signs shall not extend over a public right-of-way or project beyond the property line.

4. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.240 "R-R (5)" RURAL RESIDENTIAL

A. Purpose: To provide for low density residential and agricultural uses in a rural atmosphere which will not conflict with commercial agricultural operations.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "RR" Rural Residential zone shall comply with the following provisions:

B. Uses Permitted Without Review ~~Uses~~: The following uses ~~and activities~~ ~~and their accessory buildings and uses~~ are permitted on lands designated "R-R (5)" Rural Residential zone without review. ~~subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety~~

~~Standards:~~

1. Farm uses, provided animals and fowl are properly caged or housed and proper sanitation is maintained.
2. Forest uses, including the propagation and harvesting of forest products.
3. Utility Facilities (Minor)
4. Minor Home occupation that:
   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;
   b. Does not serve clients or customers on-site;
   c. Does not produce odor, dust, glare, flashing lights or noise;
   d. Does not occupy more than 25 percent of the floor area of the dwelling; and
   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(1) below.

D. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "R-R (5)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. One single-family dwelling ~~on any legally created parcel,~~ including mobile homes at least eighteen (18) feet wide, subject to Chapter 4 - Supplemental Provisions - Section 4.12~~6~~0, ~~provided proper sanitation approval is obtained~~. (This is not needed because it is part of the review process)

   2. ~~Buildings accessory to a single family dwelling such as garages, store rooms, woodsheds, laundry room, playhouse, greenhouse, hobby shop, animal or fowl shelter or similar and related accessory uses.~~ Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   3. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   4. Additions to, and replacement of, a lawfully established building or structure.

   5. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

E. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "R-R (5)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other

listed, referenced or applicable standards.

1. Guest house subject to ~~standards in~~ Chapter 4 - Supplemental Provisions -Section 4.13~~7~~0.

2. ~~Energy facilities subject to the provisions of Chapter 19~~. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

4. Planned Unit Developments (PUD) subject to Chapter 18 - Planned Unit Development.

5. Agricultural Produce Stand subject to Chapter 20 - Site Plan Review, and the Farm Stand requirements of Section 3.210 - Exclusive Farm Use Zone. ~~(Revised 1-92)~~

6. Cemetery.

~~F.~~ Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following uses may be permitted on a legal parcel on lands designated "R-R (5)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards. ~~In the "RR" Rural Residential zone, the following uses and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards and this section:~~

1. Major Home occupation, subject to chapter 20 - Site Plan Review - Section 20.090.

2. Bed and breakfast inns. ~~(added 2-89)~~

3. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

4. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

5. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

6. Utility Facilities (Major).

7. Mobile home parks subject to Chapter 16 - Mobile Home Parks and that is demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.

8. Recreational vehicle parks subject to Chapter 17 - Recreational Vehicle Parks and that is demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.

9. Dude ranches subject to Chapter 20 - Site Plan Review. ~~(added 2-89)~~

10. (17) Exploration mining and processing of aggregate and other mineral resources or other subsurface resources, subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

G. Property Development Standards

6. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

8. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

9. Lighting - Outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways and waterways. The exterior of shielding and hooding materials shall be composed of nonreflective, opaque materials.

10. New Driveways - All new driveways which access a public road shall obtain a Road Approach Permit from the Wasco County Public Works Department.

SECTION 3.250 "R-R(10)" RURAL RESIDENTIAL

A. Purpose: The purpose of the "R-R (10)" Rural Residential ~~(10)~~ zone is to provide for low density residential and small scale, part time agricultural and forest uses in a rural atmosphere which will not conflict with commercial agricultural operations, while preserving open space and other forest uses.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "R-R (10)" Rural Residential zone shall comply with the following regulations.

B. Uses Permitted Without Review ~~Uses~~: The following uses are permitted on lands designated ~~In the~~ "R-R (10)" Rural Residential zone without review. ~~the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Farm use, as defined in ORS 215.203(2).
~~The breeding, boarding and training of horses for profit~~. (This is now included in the definition of "Farm Use")

2. Forest Uses, including the propagation or harvesting of forest products.

5. Utility Facilities (Minor)

4. Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

5. Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

6. Temporary public road and highway detours that will be abandoned and restored to original condition

or use at such time as no longer needed.

7. Minor Home occupation that:

   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

   b. Does not serve clients or customers on-site;

   c. Does not produce odor, dust, glare, flashing lights or noise;

   d. Does not occupy more than 25 percent of the floor area of the dwelling; and

   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(8) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "R-R (10)" Rural Residential zone subject to subsection G - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   2. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   3. Additions to, and replacement of, a lawfully established building or structure.

   4. ~~Energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

   5. Public and private conservation areas and structures for the retention of water, soil, open space, forest or wildlife resources.

   6. The rehabilitation, replacements, minor betterment, repair and improvements and other similar construction activities, not considered to have land use impacts, in public parks, playgrounds and recreational areas.

   7. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous

public-owned property utilized to support the operation and maintenance of public roads and highways.

~~Utility facilities necessary for public service~~ (Replaced by Utility Facility (Minor) and Utility Facility (Major))

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "R-R (10)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. One single-family dwelling and other buildings and accessory uses subject to the request meeting standards pursuant to subsections (F~~D~~) and (G~~E~~) of this section.

2. Guest house subject to Chapter 4 - Supplemental Provisions - Section 4.13~~7~~0.

3. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

4. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

5. Agricultural Produce Stand subject to ~~Chapter 20~~ the Farm Stand requirements of Section 3.210 - Exclusive Farm Use Zone.

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following uses ~~and activities~~ may be permitted on a legal parcel on lands designated "R-R (10)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards. ~~and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards and this Section:~~

ENERGY/UTILITY FACILITIES

1. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards of Energy Facilities - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility Facilities (Major).

COMMERICAL/AGRICULTURAL /INDUSTRIAL USES

5. Major Home occupations, subject to Chapter 20 - Site Plan Review - Section 20.090.

10. Kennels.

11. Commercial activities that are in conjunction with farm use as defined in ORS 215.203(2) including the processing of farm crops into biofuel not otherwise allowed in the definition of farm use subject to the Commercial Activities in Conjunction with a Farm Use requirements of Section 3.210 - Exclusive Farm Use Zone.

12. Facilities to manufacture alcohol from farm or timber waste.

13. The propagation, cultivation, maintenance and harvest of aquatic species.

14. Exploration mining and processing of aggregate and other mineral resources or other subsurface resources, subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

G. Property Development Standards

3. Setbacks - ~~In the "R-R (10)" zone~~ No structure other than a fence or sign shall be located closer than twenty-five (25) feet from the right-of-way of a public road (front yard), twenty-five (25) feet from side yard property lines and forty (40) feet from the rear yard property line.

7. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

9. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.310 "R-R (2)" RURAL RESIDENTIAL ~~2 ACRE~~ ZONE

A. Purpose: The purpose of the "R-R (2)" Rural Residential ~~2 acre~~ zone is to provide for single-family residential use plus related compatible uses such as schools and parks. This zone is designed for those areas outside an Urban Growth Boundary or acknowledged Unincorporated Community Boundary, subject to a resource land goal exception prior to November 4, 2000, and not necessarily served by a public water or public sewer system. Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "R-R (2)" Rural Residential ~~2 acre~~ zone shall comply with the following regulations.

B. Uses Permitted Without Review ~~Uses~~: The following uses are permitted on lands designated ~~In the~~ "R-R (2)" Rural Residential zone without review.~~, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Farm uses, provided animals and fowl are properly caged or housed and proper sanitation is maintained.

2. Forest uses, including the propagation and harvesting of forest products.

3. Utility Facilities (Minor)

4. Minor Home occupation that:

   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

   b. Does not serve clients or customers on-site;

   c. Does not produce odor, dust, glare, flashing lights or noise;

   d. Does not occupy more than 25 percent of the floor area of the dwelling; and

   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(1) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "R-R (2)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. One single-family dwelling on any legally created parcel including mobile homes at least eighteen (18) feet wide subject to Chapter 4 - Supplemental Provisions - Section 4.1260, ~~provided proper sanitation approval is obtained.~~ (This is not needed because it is part of the review process)

   2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.
   ~~accessory to a single-family dwelling such as garages, store-rooms, woodsheds, laundry room, playhouse, greenhouse, hobby shop, animal or fowl shelter or similar and related accessory uses.~~

   3. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   4. Additions to, and replacement of, a lawfully established building or structure.

   5. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "R-R (2)" Rural Residential zone subject to subsection F - Property

Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Guest house subject to Chapter 4 - Supplemental Provisions - Section 4.137~~7~~0 - Development Standards for Guest Houses.

2. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

4. Agricultural Produce Stands ~~in accordance with Chapter 20 - Site Plan Review~~.

5. Cemetery.

E. Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following uses ~~and activities~~ may be permitted on a legal parcel on lands designated "R-R (2)" Rural Residential zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards Chapter 20 - Site Plan Review only if the request includes off-street parking, as well as any other listed, referenced or applicable standards. ~~and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in Chapter 5 – Conditional Use Review, Chapter 10 – Fire Safety Standards and this Section:~~

1. Major Home occupation, subject to chapter 20 - Site Plan Review - Section 20.090.

2. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030,

4. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

5. Utility Facilities (Major).

6. Bed and breakfast inns.

7. Public and semi-public buildings, structures and uses essential to the physical, social and economic welfare of an area, including but not limited to: fire stations, schools, granges, community halls, churches and libraries ~~subject to chapter 20~~.

8. Private schools or day nursery centers.

9. Parks, playgrounds and recreation areas and community or neighborhood centers ~~subject to chapter 20~~.

10. Golf courses (except commercial driving ranges, miniature golf courses or similar course operated as a business), country club, swimming club or tennis club ~~subject to chapter 20~~.

11. Dude ranches and hunting and fishing lodges, including overnight facilities ~~in accordance with Chapter 20, Site Plan Review~~ and demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.

12. Temporary tract office for the sale of lots in subdivision in which the office is located.

F. Property Development Standards

1. Height - Maximum height for all dwellings shall be thirty-five (35) feet. Height is measured from average grade. Detached accessory structures shall not exceed a maximum height of eighteen (18) feet. ~~(Added 1-92)~~

2. Stream Setbacks - All structures or similar permanent fixtures shall be setback from the high water line or mark along all streams or lakes a minimum distance of fifty (50) feet when measured horizontally at a right angle.

3. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

4. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.410 "RC" Rural Commercial

A. Purpose: The “RC” Rural Commercial Zone is intended to provide for a wide variety of commercial housing and related activities. This designation is designed for application in exception areas outside Urban Growth Boundaries of incorporated cities and community boundaries of acknowledged unincorporated communities. Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "RC" Rural Commercial Zone shall make application for a site plan review, and comply with the following regulations.

B. Uses Permitted Without Review: The following uses and activities are permitted on lands designated "RC" Rural Commercial zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated “R-C” Rural Commercial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.
~~Permitted Uses: In the "RC" Rural Commercial Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

1. Any new commercial service, or retail use, listed in section ~~C~~ D of this zone that will be located

entirely within an existing, lawfully erected commercial building or structure, demonstrating compliance with off-street ~~and public~~ parking, off-street loading and bicycle parking requirements ~~area~~ requirements in Chapter ~~4~~ 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to a commercial use the combined footprint of all commercial buildings and all accessory buildings shall not exceed 3,500 sq. ft.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Chapter 19 - Standards for Energy Facilities - Section 19.030.

~~D.~~ Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact ~~commercial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "RC" Rural Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of~~ 3,500 ~~sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 3,500 sq ft:

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following small scale low impact ~~commercial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "RC" Rural Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of~~ 3,500 ~~sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 – Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. ~~Wind energy conversion system subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility facilities (Major) ~~necessary for public service~~, except landfill.

~~Water supply or treatment facility.~~ (This is covered by Utility Facility (Major)

5. Recreational Vehicle Park subject to Chapter 17 – Recreational Vehicle Parks and that is demonstrated not to require service by a new community sewer or extension of an existing sewer system from within an urban growth boundary or from within an unincorporated community.

6. Medical center.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 3,500 sq ft:

F. Property Development Standards

2. Setbacks:

Side Yard - Where the side of a lot or parcel in a "C~~-1~~" zone abuts the side of an "A-1" or an "R" zone, there shall be a side yard of not less than seven (7) feet. In all cases, on a corner lot or parcel, there shall be a side yard setback of ten (10) feet from exterior side property lines for corner building sites. In other cases, a side yard for commercial buildings shall not be required.

Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

Parking - Off-street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.510 "RI" RURAL INDUSTRIAL ZONE

A. Purpose: The “RI” Rural Industrial Zone is intended to create, preserve, and enhance areas containing secondary manufacturing and related establishments and intense commercial uses with limited external impact. This designation is designed for application in exception areas outside Urban Growth Boundaries of incorporated cities and community boundaries of acknowledged unincorporated communities

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "RI" Rural Industrial Zone shall make application for a site plan review and comply with the following regulations.

B. Uses Permitted Without Review: The following uses are permitted on lands designated "RI" Rural Industrial zone without review.

1. Utility Facilities (Minor)

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated “R-I” Rural Industrial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.
~~Permitted Uses: In the "RI" Rural Industrial Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance:~~

1. Any new industrial use listed in ~~C~~ D of this zone, that will be located entirely within an existing, lawfully erected commercial or industrial building or structure demonstrating compliance with off-

street ~~and public~~ parking, off-street loading and bicycle parking requirements ~~area~~ requirements in Chapter ~~4~~ 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to a commercial or industrial use the combined footprint of all commercial or industrial buildings and all accessory buildings shall not exceed 3,500 or 35,000 sq. ft respectively.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact ~~industrial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "RI" Rural Industrial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 35,000 sq. ft. and activities and their accessory buildings and uses are permitted in a building or buildings not exceeding 35,000 sq. ft. of floor space when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 – Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards ~~Chapter 20 - Site Plan Review and this Chapter:~~

1. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 35,000 sq ft:

E. Uses Permitted Subject to Conditionally Use Review/Type II or Type III: The following small scale low impact ~~rural commercial and industrial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "RI" Rural Industrial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 3,500 sq. ft. for commercial and 35,000 sq. ft. for industrial when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 – Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility facilities (Major) ~~necessary for public service~~.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 3,500 sq. ft. for commercial and 35,000 sq. ft. for industrial:

5. Any use permitted subject to standards ~~site plan review~~ or conditionally in the Rural Commercial zone.

6. Operations conducted for the exploration, mining and processing of aggregate and other minerals as subsurface resources, subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

F. Property Development Standards

a. Side Yards - Where the side or rear of a lot or parcel in an "M-~~1~~" zone abuts a residential zone, there shall be a side or rear yard of not less than fifty (50) feet. In all cases, on a corner lot or parcel, there shall be a side yard setback of at least ten (10) feet from exterior side property lines for corner building sites. Where the side of a lot or parcel in the "RI" zone abuts the side of an "A-1" zone, there shall be a side or rear lot setback of 100 feet from the common property line. In other cases, a side yard shall not be required.

2. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

3. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.601 "~~RC-~~TV-R" TYGH VALLEY RESIDENTIAL ZONE

A. Purpose: The purpose of the "~~RC-~~TV-R" Tygh Valley Residential zone is to provide for single family residential use where single family dwellings, including manufactured homes, may be located on single-family lots/parcels, where manufactured home parks may be established conditionally if designed in accordance with zoning density standards and where single-family residential uses plus related compatible uses can be sited. This zone is designed for parcels not necessarily served by a public water or public sewer system.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~TV-R" Tygh Valley Residential zone shall comply with the following regulations.

B. Uses Permitted Without Review ~~Uses~~: The following uses are permitted on lands designated ~~In the~~ "TV-R" Tygh Valley Residential zone without review. ~~the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Minor Home occupation that:

If the home occupation does not meet the standards above it shall be reviewed pursuant to subsection E(1) below.

2. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "TV-R" Tygh Valley Residential zone subject to subsection F - Property

Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

1. One Single-family dwelling/manufactured home on each legal lot/parcel subject to Chapter 4 – Supplemental Provisions - Section 4.12~~6~~0. Pre-existing sub standard lots/parcels must provide proof of adequate sewer and water subject to DEQ standards. New lots/parcels which have tested to a higher density (see property development standards) shall adhere to the well and/or sub-surface septic system location requirements approved in conjunction with a partition and concurrent binding site plan.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "TV-R" Tygh Valley Residential zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following uses ~~and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ may be permitted on a legal parcel on lands designated "~~RC-~~TV-R" Tygh Valley Residential zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well any other listed, referenced or applicable standards.

1. Major Home occupation, subject to chapter 20 - Site Plan Review - Section 20.090.

2. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

5. Utility facilities (Major), ~~necessary for public service~~ except landfills.

6. Public parks, recreation areas and community or neighborhood centers.

7. Public and semi-public buildings and uses not otherwise specified in this section.

8. Golf courses.

9. Mobile home parks subject to the density of the "~~RC-~~TV-R" zone and the provisions of Chapter 16 - Mobile Home Parks.

10. Bed and breakfast inns.

11. Multi-family dwelling complex.

11. Planned Unit Developments subject to ~~section~~ Chapter 18 – Planned Unit Development.

F. Property Development Standards

a. New lots or parcels served by an approved community, municipal or public water system shall have a minimum average width of 250 feet and a minimum area of 2 acres.

Lot/parcel owners can elect to test to a higher density, up to .5 acres, with a minimum average lot width of 100', by providing the Wasco County Planning Department with a concurrent binding site plan in addition to meeting the requirements of ~~Section~~ Chapter 21 – Land Divisions. This site plan shall indicate an approved location for sub-surface septic system(s) which shall not adversely impact neighboring properties and prevent them from testing to a higher density. The primary determinant of impacts to adjacent properties will be based on adequate setback of septic facilities from adjoining properties to ensure the full well setback is not required to be provided by adjacent property owners. See Diagram 1 below. The site plan shall be reviewed by both the Wasco County Sanitarian and Watermaster prior to acceptance by the Planning Department.

b. New lots or parcels not served by an approved community, municipal or public water system, evaluated in accordance with state laws governing review of public facilities plans in rural communities, shall a have a minimum average width of 250 feet and a minimum area of 4 acres.

Lot or parcel owners can elect to test to a higher density, up to 1.5 acres with a minimum average lot width of 150', by providing the Wasco County Planning Department with a concurrent binding site plan in addition to meeting the requirements of ~~Section~~ Chapter 21 – Land Divisions. This site plan shall indicate an approved location for well(s) and sub-surface septic system(s) which will not adversely impact neighboring properties and prevent them from testing to a higher density. The primary determinant of impacts to adjacent properties will be based on adequate setback of septic and well facilities from adjoining properties to ensure the full septic and well setback is not required to be provided by adjacent property owners. See Diagram 1 below. The site plan shall be reviewed by both the Wasco County Sanitarian and Watermaster prior to acceptance by the Planning Department.

5. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

7. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.602 "~~RC-~~TV-C" TYGH VALLEY COMMERCIAL ZONE

A. Purpose: The purpose of the "~~RC-~~TV-C" Tygh Valley Commercial zone is to provide areas for localized shopping facilities. It is intended to preserve and enhance a wide range of retail sales and service establishments serving both the long and short term needs of Tygh Valley and its surrounding area.

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~TV-C" Tygh Valley Commercial zone shall comply with the following regulations.

B. Uses Permitted Without Review: The following uses are permitted on lands designated "TV-C" Tygh Valley Commercial zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following small scale low impact uses are permitted on a legal parcel on lands designated "TV-C" Tygh Valley Commercial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards. ~~Permitted Uses: In the "RC-TV-C" zone, the following uses and activities and their accessory uses are permitted subject to the applicable provisions and exceptions set forth by this Ordinance:~~

1. Any new commercial service, or retail use, listed in Section D ~~C~~ of this zone, that will be located entirely within an existing, lawfully erected building or structure demonstrating compliance with off-street parking, off-street loading and bicycle parking requirements in Chapter 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to a commercial use the combined footprint of all commercial buildings and all accessory buildings shall not exceed 4,000 sq. ft.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact ~~commercial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "TV-C" Tygh Valley Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review, as well as any other listed, referenced or applicable standards~~, and this Chapter:~~

1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following uses in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft:

E. Uses Permitted Subject to Conditionally Use Review/Type II or Type III: The following small scale low impact ~~commercial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "TV-C" Tygh Valley Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of~~ 4,000 ~~sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. ~~Wind energy conversion system subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility facilities (Major) ~~necessary for public service~~, except landfill.

   ~~Water supply or treatment facility~~.(Replaced by Utility Facility (Major)

5. Church.

6. Public or semi public buildings.

7. Public or private school.

8. Medical center.

Any combination of the following uses in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft:

9. Motel with a maximum of 35 units, only if served by a community sewer system as defined in OAR 660-22-101(2).

10. Automobile service stations.

11. Recreational Vehicle Park with an office and accessory structures not exceeding 4,000 square feet of floor space.

F. Property Development Standards

   a. Side Yard - Where the side of a lot or parcel in a "C~~-2~~" zone abuts the side of an "R" zone, there shall be a side yard of not less than seven (7) feet.

5. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

7. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.603 "~~RC-~~TV-M1" TYGH VALLEY LIGHT INDUSTRIAL/COMMERCIAL ZONE

A. Purpose: The "~~RC-~~TV-M1" Tygh Valley Light Industrial/Commercial zone is intended to create, preserve, and enhance areas containing secondary manufacturing and related establishments and commercial uses with limited external impact.

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~TV-M1" Tygh Valley Light Industrial/Commercial zone shall comply with the following regulations.

B. Uses Permitted Without Review: The following uses are permitted on lands designated TV-M1" Tygh Valley Light Industrial/Commercial zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following small scale low impact uses are permitted on a legal parcel on lands designated "TV-M1" Tygh Valley Light Industrial/Commercial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards. ~~Permitted Uses: In the "RC TV M1" zone, the following uses and activities and their accessory uses are permitted subject to the applicable provisions and exceptions set forth by this Ordinance:~~

1. Any new industrial use listed in D ~~C~~ of this zone, that will be located entirely within an existing, lawfully erected building or structure demonstrating compliance with off-street parking, off-street loading and bicycle parking requirements in Chapter 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to a commercial or industrial use the combined footprint of all commercial or industrial buildings and all accessory buildings shall not exceed 4,000 or 10,000 sq. ft respectively.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact ~~industrial~~ uses ~~and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "~~RC-~~TV-M1" Tygh Valley Light Industrial/Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 10,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review as well as any other listed, referenced or applicable standards.~~, and this Chapter:~~

1. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 10,000 sq ft:

E. Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following small scale low impact ~~industrial and commercial~~ uses ~~or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "TV-M1" Tygh Valley Light Industrial/Commercial Zone ~~are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance~~ ~~as required in~~ subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. ~~Wind energy conversion system subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Utility facilities (Major) ~~necessary for public service~~, except landfill.

   ~~Water supply or treatment facility~~.(Replaced by Utility Facility (Major)

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

5. Motel with a maximum of 35 units, only if served by a community sewer system as defined in OAR 660-22-101(2).

6. Church.

7. Public or semi public buildings.

8. Public or private school.

9. Parks, playgrounds or community centers owned by a governmental agency or non-profit community organization.

10. Medical center.

11. Junk yard or automotive wrecking yard.

12. Recreation areas and facilities, including but not limited to: golf courses.

13. Bulk storage of petroleum or gas.

14. Operations conducted for the exploration, mining and processing of aggregate and other minerals as subsurface resources, subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 4,000 sq ft:

~~A building or buildings not exceeding 4,000 square feet of floor space to be used~~

~~by any combination of the following uses:~~

15. Retail or service business.

16. Eating or drinking establishment.

17. Offices.

18. Veterinary clinic and kennel entirely within an enclosed building.

19. Studio.

20. Public garage, including usual automobile repairs and servicing enclosed within the building that when within fifty (50) feet of an "A" or an "R" zone, there shall be no openings in the building walls facing the boundaries of an "A" or "R" zone other than stationary windows, except where such building walls abut streets or alleys.

21. Residential use in the same building as an allowed use in 14 ~~a.~~ through 19 ~~f.~~ above.

22. Automobile service station ~~in a building or buildings not exceeding 4,000 square feet of floor space~~.

23. Recreational Vehicle Park with an office and accessory structures not exceeding 4,000 square feet of floor space.

24. Place of public assembly, stadium, auditorium, recreation building or natatorium ~~in a building or buildings not exceeding 4,000 square feet of floor space~~.

25. Commercial amusement establishments (stadium, theatre, bowling alley, theatre). Limited in size only when enclosed ~~in a building or buildings not exceeding 4,000 square feet of floor space~~.

E. Property Development Standards

5. Floodplain – Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

7. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.604 "~~RC-~~TV-M2" TYGH VALLEY MEDIUM INDUSTRIAL ZONE

A. Purpose: The purpose of the "~~RC-~~TV-M2" Tygh Valley Medium Industrial zone is to provide for the location of needed industrial uses which are not dependent upon urban services. The "RC-TV-M2" zone encourages orderly and compatible development of industrial uses while protecting the existing rural character of the area as well as preserving or enhancing the air, water and land resources of the area.

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~TV-M2" Tygh Valley Medium Industrial zone shall comply with the following regulations.

B. Uses Permitted Without Review: The following uses and activities are permitted on lands designated "TV-M2" Tygh Valley Medium Industrial zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following small scale low impact uses are

permitted on a legal parcel on lands designated "TV-M2" Tygh Valley Medium Industrial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards. ~~Permitted Uses: In the "RC-TV-M2" zone, the following uses and activities and their accessory uses are permitted subject to the applicable provisions and exceptions set forth by this Ordinance:~~

1. Any new industrial use listed in D ~~C~~ of this zone, that will be located entirely within an existing, lawfully erected building or structure demonstrating compliance with off-street parking, off-street loading and bicycle parking requirements in Chapter 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to an industrial use the combined footprint of all industrial buildings and all accessory buildings shall not exceed 10,000 sq. ft.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact uses ~~and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "~~RC-~~TV-M2" Tygh Valley Medium Industrial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 10,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review as well as any other listed, referenced or applicable standards.~~, and this Chapter:~~

1. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

   ~~Utility facilities necessary for public service, except landfill.~~(Replaced by Utility Facility Major in CUP Section)

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 10,000 sq ft:

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following small scale low impact uses may be permitted on a legal parcel on lands designated ~~In the~~ "TV-M2" Tygh Valley Medium Industrial Zone ~~in a building or buildings not exceeding a cumulative floor area of 10,000 sq. ft. are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Utility facilities (Major) except landfill.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 10,000 sq ft.

12. Operations conducted for the exploration, mining and processing of aggregate and other minerals as subsurface resources subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

E. Property Development Standards

5. Floodplain – Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

7. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.605 "~~RC-~~TV-RR" TYGH VALLEY RURAL RESERVE ZONE

A. Purpose: Provide a zone where sensitive areas can be protected and community open space and recreational needs can be accommodated.

B. Uses Permitted Without Review: The following uses are permitted on lands designated TV-RR" Tygh Rural Reserve zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "TV-RR" Tygh Valley Rural Reserve zone subject to subsection E - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards. ~~Permitted Uses: In the "RC-TV-RR" zone, the following uses and activities and their accessory uses are permitted subject to the applicable provisions and exceptions set forth by this Ordinance:~~

1. Repair, maintenance, operation and improvement of existing, legally implemented, serviceable structures, including roads.

D. Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following uses may be permitted on a legal parcel on lands designated ~~In the~~ "~~RC-~~TV-RR" Tygh Valley Rural Reserve Zone ~~are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection E - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Suitable community facilities to accommodate community gatherings and/or appropriate levels of recreational activities such as, community buildings, trails, waterfront access, cemeteries, athletic fields and parks.

2. Utility facilities (Major), except landfill.

3. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

4. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

E. Property Development Standards

5. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

7. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.606 "~~RC-~~TV-AG" TYGH VALLEY AGRICULTURAL ZONE

A. Purpose: The purpose of the "~~RC-~~TV-AG" Tygh Valley Agriculture zone is to preserve and maintain agricultural lands for farm use consistent with its location within the Rural Community Boundary.

B. Uses Permitted Without Review ~~Permitted Uses~~: The following uses ~~and activities~~ ~~and their accessory buildings and uses~~ are permitted on lands designated "TV-AG" Tygh Valley Agriculture zone without review ~~subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards~~

1. Farm use as defined by ORS 215.203, Oregon Revised Statutes, and found in Section 1.080 (Definitions).

2. Forest uses, including the propagation and harvesting of forest products.

3. Creation, restoration and enhancement of wildlife habitat and wetlands. that do not include development as defined by Section 3.741 in a FEMA designated Flood Zone. If the project is located wholly or partially within a FEMA designated Flood Zone and includes structural development it shall be subject to Section D(5) below.

4. Minor Home occupation that:

   a. Is carried on within a dwelling only by members of the family who reside in the dwelling;

   b. Does not serve clients or customers on-site;

   c. Does not produce odor, dust, glare, flashing lights or noise;

   d. Does not occupy more than 25 percent of the floor area of the dwelling; and

   e. Does not include the on-premises display of sale of stock in trade.

   f. If the home occupation does not meet the standards above it shall be reviewed pursuant to subsection E(1) below.

5. Utility Facilities (Minor)

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal

parcel on lands designated "TV-AG" Tygh Valley Agriculture zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, as well as any other listed, referenced or applicable standards.

This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

1. One Single-family dwelling/manufactured home on each legal lot/parcel subject to Chapter 4 - Supplemental Provisions - Section 4.12~~6~~0

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

3. Agricultural buildings and structures provided in conjunction with a "Farm Use" as evidenced by a "Farm Management Plan". This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

4. Additions to, and replacement of, a lawfully established building or structure.

5. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "TV-AG" Tygh Valley Agriculture zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

3. Public parks, athletic fields, recreation areas, preserves and community or neighborhood centers ~~in accordance with Chapter 20 (Site Plan Review).~~

4. Dude ranches and hunting and fishing lodges ~~in accordance with Chapter 20 (Site Plan Review).~~

5. Creation, restoration or enhancement of wilflife habitat or wetlands that includes development as defined by Section 3.741 in a FEMA designated floodplain subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

E. Uses Permitted Subject to Conditionall~~y~~ Use Review/Type II or Type III: The following uses ~~and activities~~ may be permitted on a legal parcel on lands designated "TV-AG" Tygh Valley Agriculture zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Major Home Occupations, subject to Chapter 20 - Site Plan Review - Section 20.090.

2. Bed and breakfast Inn in an existing residence, ~~subject to Chapter 20 (Site Plan Review).~~

3. Commercial activities in conjunction with farm use as defined in ORS 215.203, including the processing of farm crops into biofuel not otherwise allowed in the definition of farm use subject to the Commercial Activities in Conjunction with a Farm Use requirements of Section 3.210 - Exclusive Farm Use Zone.

4. Dog kennels, except that such uses are prohibited on high value farmland.

5. Propagation, cultivation, maintenance, and harvesting of aquatic or insect species.

6. Golf courses (except commercial driving ranges, miniature courses or similar courses operated as a business).

7. Exploration, mining and processing of aggregate and other mineral resources or other subsurface resources subject to ORS 215.298 and ~~WCLUDO~~ Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

8. ~~Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.~~Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

9. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

10. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 9 - Standards for Energy Facilities - Section 19.030.

11. Utility facilities ~~"necessary" for public service~~(Major).

~~Water supply and treatment facility.~~(Replaced by Utility Facility (Major))

~~Sewage disposal and treatment facility. .~~(Replaced by Utility Facility (Major))

F. Property Development Standards

4. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

5. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.611 " ~~RC-~~Wam-R-2" WAMIC RESIDENTIAL ZONE

A. Purpose: The purpose of the "~~RC-~~Wam-R-2" Wamic Residential 2 zone is to provide for a single family residential use including mobile homes plus related compatible uses such as schools and parks.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~Wam-R-2" Wamic Residential 2 zone shall comply with the following regulations.

B. Uses Permitted Without Review ~~Uses~~: The following uses are permitted on lands designated ~~In the~~ "Wam-R-2" Wamic Residential 2 zone without review. ~~the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Utility Facilities (Minor).

2. Minor Home occupation that:

   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

   b. Does not serve clients or customers on-site;

   c. Does not produce odor, dust, glare, flashing lights or noise;

   d. Does not occupy more than 25 percent of the floor area of the dwelling; and

   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(1) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "Wam-R-2" Wamic Residential 2 zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. One single-family dwelling, including mobile homes except single-wides on each legal lot/parcel provided that the minimum average density is maintained ~~and proper sanitation approvals are obtained~~. Dwellings on pre-existing sub standard lots/parcels must be connected to a Department of Environmental Quality permitted community or municipal sewer system.

   2. Buildings accessory to ~~a single-family dwelling such as garages, store-rooms, woodsheds, laundry rooms, playhouses, hobby shop or similar and related accessory uses.~~ a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   3. Additions to, and replacement of, a lawfully established building or structure.

   4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "Wam-R-2" Wamic Residential 2 zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

   1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

   2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

3. Planned Unit Development subject to Chapter 18 – Planned Unit Development.

E. Uses Permitted Subject to Conditionally Use Review/Type II or Type III: The following uses ~~and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ may be permitted on a legal parcel on lands designated "Wam-R-2" Wamic Residential 2 zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well any other listed, referenced or applicable standards.

1. Major Home occupation, subject to Chapter 20 - Site Plan Review - Section 20.090.

2. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Hospitals and schools (kindergartens, elementary, junior high and high), provided setbacks are established from side and rear property lines of at least fifty (50) feet.

4. Public parks, recreation areas and community or neighborhood centers.

5. Public and semi-public buildings and uses not otherwise specified in this section.

6. Golf courses.

7. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

8. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

9. Utility facilities (Major) ~~necessary for public service~~ except landfill.

F. Property Development Standards

6. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD).

8. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.612 "~~RC-~~Wam-R-5" WAMIC RESIDENTIAL ZONE

A. Purpose: The purpose of the "~~RC-~~Wam-R-5" Wamic Residential 5 zone is to provide for a single family residential use including mobile homes plus related compatible uses such as schools and parks.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~Wam-R-5" Wamic Residential 5 zone shall comply with the following regulations.

B. Uses Permitted Without Review ~~Uses~~: The following uses are permitted on lands designated ~~In the~~ "Wam-R-5" Wamic Residential 5 zone without review. ~~the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance and Chapter 10 – Fire Safety Standards:~~

1. Utility Facilities (Minor).

2. Minor Home occupation that:

   a. Is carried on within a lawfully established dwelling only by members of the family who reside in the dwelling;

   b. Does not serve clients or customers on-site;

   c. Does not produce odor, dust, glare, flashing lights or noise;

   d. Does not occupy more than 25 percent of the floor area of the dwelling; and

   e. Does not include the on-premises display or sale of stock in trade.

   Any Home Occupation that exceeds these standards is Major and subject to Section E(1) below.

C. Uses Permitted Subject to Ministerial/Type I Review: The following uses are permitted on a legal parcel on lands designated "Wam-R-5" Wamic Residential 5 zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

   This review involves an evaluation by Planning Department staff but only requires formal zoning approval if the use is required to be reviewed by Building Codes. If the use does not require formal zoning approval but is requested by the applicant for future documentation, the applicant will be charged the appropriate ministerial review fee.

   1. One single-family dwelling, including mobile homes except single-wides, on each legal lot/parcel including mobile homes with a minimum of eight hundred (800) square feet of floor area subject to Chapter 4 - Supplemental Provisions - Section 4.160 provided that the minimum average density is maintained ~~and proper sanitation approvals are obtained~~. Dwellings on pre-existing sub standard lots/parcels must be connected to a Department of Environmental Quality permitted community or municipal sewer system.

   2. Buildings accessory to ~~a single family dwelling such as garages, store rooms, woodsheds, laundry rooms, playhouses, hobby shop or similar and related accessory uses.~~ a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground.

   3. Additions to, and replacement of, a lawfully established building or structure.

   4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review: The following uses may be permitted on a legal parcel on lands designated "Wam-R-5" Wamic Residential 5 zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

   1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

   2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

3. Planned Unit Development subject to Chapter 18 – Planned Unit Development.

E. Uses Permitted Subject to Conditionally Use Review/Type II or Type III: The following uses ~~and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ may be permitted on a legal parcel on lands designated "~~RC-~~Wam-R-5" Wamic Residential 5 zone subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well any other listed, referenced or applicable standards.

1. Major Home occupation, subject to Chapter 20 - Site Plan Review - Section 20.090.

2. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

3. Hospitals and schools (kindergartens, elementary, junior high and high), provided setbacks are established from side and rear property lines of at least fifty (50) feet.

4. Public parks, recreation areas and community or neighborhood centers.

5. Public and semi-public buildings and uses not otherwise specified in this section.

6. Golf courses.

7. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

8. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

9. Utility facilities (Major) ~~necessary for public service~~ except landfill.

F. Property Development Standards

6. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

8. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.613 "~~RC-~~Wam C-2" WAMIC COMMERCIAL ZONE

A. Purpose: The purpose of the "~~RC-~~Wam-C-2" Wamic Commercial Zone is to provide areas for localized shopping facilities. It is intended to preserve and enhance areas with a wide range of retail sales and service establishments serving both long and short term needs in compact areas.

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~Wam-C-2" Wamic Commercial Zone shall comply with the following regulations.

B. Uses Permitted Without Review: The following uses and activities are permitted on lands designated "Wam-C-2" Commercial Zone zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following small scale low impact uses are permitted on a legal parcel on lands designated "Wam-C-2" Wamic Commercial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards. ~~Permitted Uses: In the "RC Wam M-2" zone, the following uses and activities and their accessory uses are permitted subject to the applicable provisions and exceptions set forth by this Ordinance:~~

1. Any new commercial service, or retail use that will be located within an existing building or structure demonstrating compliance with off-street parking, off-street loading and bicycle parking requirements in Chapter 20 - Site Plan Review.

2. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to a commercial use the combined footprint of all commercial buildings and all accessory buildings shall not exceed 4,000 sq. ft.

3. Additions to, and replacement of, a lawfully established building or structure.

4. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact ~~commercial uses or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "Wam-C-2" Wamic Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review as well as any other listed, referenced or applicable standards.~~, and this Chapter:~~

1. Non-commercial/stand alone power generating facilities and Meteorological Towers subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following uses in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft. ~~square feet of floor space to be used by~~

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following small scale low impact ~~commercial uses or any combination of these uses and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "Wam-C-2" Wamic Commercial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. ~~Wind energy conversion system subject to the provisions of Chapter 19 (Standards for Energy Facilities).~~ Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility facilities (Major) ~~necessary for public service~~.

   ~~Water supply or treatment facility~~.(Replaced by Utility Facility (Major))

5. Church.

6. Public or semi public buildings.

7. Public or private school.

8. Medical center ~~in a building or buildings not exceeding 4,000 square feet of floor space.~~

Any combination of the following uses in a building or buildings not exceeding a cumulative floor area of 4,000 sq. ft:

9. Motel with a maximum of 35 units, only if served by a community sewer system as defined in OAR 660-22-101(2).

10. Automobile service stations.

11. Recreational Vehicle Park with an office and accessory structures not exceeding 4,000 square feet of floor space.

12. Place of public assembly (stadium, auditorium, recreation building or natatorium).

13. Commercial amusement establishments when enclosed in a building(stadium, theatre, bowling alley, theatre).

14. Child care center.

15. Parks, playgrounds or community centers owned by a governmental agency or non-profit community organization. ~~(Goal 3).~~

F. Property Development Standards

   b. Side Yard - Where the side of a lot or parcel in a "~~RC-~~Wam-C-2" zone abuts the side of an "A" or an "R" zone, there shall be a side yard of not less than seven (7) feet.

8. Floodplain – Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

10. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.614 "~~RC-~~Wam-M-2" WAMIC MEDIUM INDUSTRIAL ZONE

A. Purpose: The purpose of the "~~RC-~~Wam-M-2" Medium Industrial Zone is to create, preserve and enhance areas containing a wide range of manufacturing and related establishments, and is typically appropriate to areas providing a wide variety of sites with good rail or highway access.

Buildings and structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "~~RC-~~Wam-M-2" Medium Industrial Zone shall comply with the following regulations.

B. Uses Permitted Without Review: The following uses and activities are permitted on lands designated "Wam-M2" Wamic Medium Industrial zone without review.

1. Utility Facilities (Minor).

C. Uses Permitted Subject to Ministerial/Type I Review: The following small scale low impact uses are permitted on a legal parcel on lands designated "Wam-M-2" Wamic Medium Industrial zone subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards as well as any other listed, referenced or applicable standards.

1. Buildings and structures accessory to a lawfully established use. This also includes buildings less than 200 square feet in area, buildings less than 10 feet in height, and decks including those less than 30" from the ground. If the building(s) is accessory to an industrial use the combined footprint of all buildings and all accessory buildings shall not exceed 10,000 sq. ft.

2. Additions to, and replacement of, a lawfully established building or structure.

3. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

D. Uses Permitted Subject to Standards/Type II Review ~~Site Plan~~ Review: The following small scale low impact uses ~~and their accessory uses~~ may be permitted on a legal parcel on lands designated ~~In the~~ "~~RC-~~Wam-M-2" Wamic Medium Industrial Zone ~~are permitted in a building or buildings not exceeding a cumulative floor area of 10,000 sq. ft. when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review as well as any other listed, referenced or applicable standards.~~, and this Chapter:~~

1. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Partitions, Property Line Adjustments and Subdivisions subject to Chapter 21 - Land Divisions.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 10,000 sq ft:

E. Uses Permitted Subject to Conditional~~ly~~ Use Review/Type II or Type III: The following small scale low impact uses may be permitted on a legal parcel on lands designated ~~In the~~ "Wam-M-2" Wamic Medium Industrial Zone ~~in a building or buildings not exceeding a cumulative floor area of 10,000 sq. ft. are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in~~ subject to subsection F - Property Development Standards, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 - Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.

1. Non-commercial/stand alone power generating facilities and Meteorological Towers Subject to

Chapter 19 - Standards for Energy Facilities - Section 19.020. Small scale commercial power generating facilities may be allowed under this provision if allowed by Section 19.030.

2. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 – Standards for Energy Facilities - Section 19.030.

3. Related or Supporting Facilities to a Commercial Power Generating Facility subject to Chapter 19 - Standards for Energy Facilities - Section 19.030.

4. Utility facilities (Major) except landfill.

Any combination of the following in a building or buildings not exceeding a cumulative floor area of 10,000 sq ft:

5. One mobile home or watchman's quarters in conjunction with a permitted or conditional use.

6. Concrete batching plants and the manufacture and sale of concrete products.

7. Automobile Service Stations.

8. Junk yard or automotive wrecking yard enclosed with a view-obscuring fence or wall.

9. Recreation areas and facilities, including but not limited to golf courses.

10. Bulk storage of petroleum or gas.

11. Operations conducted for the exploration, mining and processing of aggregate and other minerals as subsurface resources subject to Section 3.800 - Mineral & Aggregate Overlay (EPD 5).

F. Property Development Standards

b. Side Yard - Where the side of a lot in the "~~RC-~~Wam-M-2" Medium Industrial Zone abuts the side of a lot in an "A" or an "R" zone, there shall be a side yard of not less than seven (7) feet in width for buildings not exceeding two and one-half (2 & 1/2) stories in height; for buildings exceeding two and one-half stories in height, such side yard shall be increased three (3) feet in width for every story or portion thereof that such buildings' height exceeds two and one-half stories.

8. Floodplain - Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740 - Flood Hazard Overlay (EPD 1).

9. Signs - No standard established except no sign shall be placed upon walls or surfaces abutting an "A" or an "R" zone.

10. Parking - Off street parking shall be provided in accordance with Chapter 20 - Site Plan Review.

SECTION 3.910 DIVISION 7 - NATURAL AREAS OVERLAY

A. Purpose: This overlay district is intended to pre-empt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. This overlay applies to all natural areas identified in the Wasco County Comprehensive Plan and to the Wasco County portions of the Deschutes, ~~and~~ John Day, and White Rivers designated as Wild & Scenic Rivers ~~Areas~~ as defined and protected in ORS 390.805 & 390.825 or USFC & CFR.

CHAPTER 4 AMENDMENTS

SECTION 4.070 General Exceptions to Building Height Requirements

Necessary roof structures, housing elevators, stairways, tanks, fans and ventilators and towers, steeples, flagpoles, smokestacks, silos, grain elevators, ~~energy facilities and commercial energy facilities~~ uses specified in Chapter 19 - Energy Facilities (meteorological towers, transmission towers and lines, and commercial, net-metering, and non-commercial/stand alone power generating facilities) , communication towers, water tanks and skylights and fire or parapet walls may be erected above the height limits of the zone in which they are located provided no usable floor space is provided in such structures above the required height limits. ~~Transmission towers~~ All structures over 200 feet in height require a Conditional Use Permit for aviation safety.

CHAPTER 15 AMENDMENTS

SECTION 15.020 ~~Building Permits~~ Zoning Approval

~~No permit shall be issued by the Building Official or any government agency for the construction, erection, location, maintenance, repair, alteration or enlargement, or the change of use of a structure or property that does not conform to the requirements of this Ordinance.~~

A. The Director, the Director's designee or other Approving Authority shall not give zoning approval on any development or use of land, including land divisions and property line adjustments on a property that is not in full compliance with all applicable provisions of this ordinance, regardless of whether the applicant(s) or current owner(s) created the violation.

B. Zoning approval may be authorized if:

1. It results in the property coming into full compliance with all applicable provisions of the Wasco County Land Use and Development Ordinance. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

2. It is necessary to protect public safety; or

3. It is for work related to and within a valid easement over, on or under an affected property.

SECTION 15.030 Authority

Whenever necessary to enforce the provisions of this Ordinance, the Director, or the Director's designee, shall have the authority in addition to other remedies provided by law, to issue ~~warning notices and citations, to institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate a violation.~~ compliance notices and orders, assess penalties, record violations and liens with the County Clerk, issue citations, to institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate a violation.

SECTION 15.070 Wasco County Code Compliance and Nuisance Abatement Ordinance

The Wasco County Code Compliance and Nuisance Ordinance is a separate Board of County Commissioner adopted ordinance that implements land use, nuisance and health violations. Please refer to that ordinance for further details related to enforcement of the provisions of the Wasco County Land Use and Development Ordinance.

SECTION 15.070 Penalties

Any person, firm, corporation or other entity who violates any of the provisions of this Ordinance shall be guilty of a violation and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars ($100.00) for each day of violation where the offense is a continuing offense, but such fine may not exceed one thousand dollars ($1,000.00) for each occurrence of the continuing offense or a fine of five hundred dollars ($500.00) where the offense is not a continuing offense. (amended 2-89)

SECTION 15.080 Jurisdiction

The Circuit Court for the State of Oregon for the County of Wasco has jurisdiction over any and all violations of this Ordinance.

SECTION 15.090 Issuance of Warning Notice

No citation shall be issued pursuant to this Ordinance unless, at least fifteen (15) days prior to service of such citation, a warning notice delivered by certified mail giving a brief description of the violation alleged to exist is first served upon the person accused of the offense or posted on the property where the violation is alleged to exist. The warning notice shall further contain the name of the County department to contact regarding the violation, the name of the person issuing the warning notice, the date the warning was issued and a statement that failure to correct the alleged violation or to contact the appropriate County department may result in issuance of a formal citation to the Wasco County Circuit Court.

SECTION 15.100 Requirements of Citation; Form and Content

A. A citation conforming to the requirements of this Ordinance may be used for all Land Use Development and Solid Waste Ordinance violations committed in the presence of the complainant and which occur in the unincorporated areas of Wasco County, Oregon.

B. The citation shall consist of at least three (3) parts. Additional parts may be inserted for administrative use. The required parts are:

1. Complaint;

2. Planning Department's or Health Department's record of violation;

3. Summons.

C. Each of the parts shall contain the following information or blanks in which such information shall be entered:

1. Name of the Court and the Court's docket or file number;

2. Name of the person cited;

3. Section of the Ordinance violated;

4. Brief description of the violation of which the person is charged in such manner as can be readily understood by a person making a reasonable effort to do so, the date and place at which the violation occurred, the date on which the citation was issued, and the name of the complainant;

5. The time and place where the person cited is to appear in Court;

6. The bail, if any, fixed for the violation;

7. The designation of the method of service and certification that such service has been made;

a. The certification, if made by a Planning Department employee or Health Department employee,

need not be made before a magistrate or any other person. A private person shall certify before a Circuit Court Judge, Clerk or Deputy Clerk of the Circuit Court of Wasco County, and this action will be entered in the Court record.

b. When such service is by certified mail, return receipt requested as described in Section 15.120 (A) of this Chapter, such shall be stated on the complaint and the required certification of service may be made upon receipt of the "return receipt" and after filing of the complaint. The complaint shall contain a form of certificate by the complainant to the effect that he certifies that he has reasonable grounds to believe, and does believe, that the person cited committed the violation contrary to the Land Use and Development or Solid Waste ordinance made and provided by Wasco County, Oregon.

The reverse side of the complaint shall contain the Court record and contain the substance of the matter appearing on the reverse side of all uniform complaints used in the Circuit Court of Oregon in Wasco County or otherwise directed by the Circuit Court.

A certificate conforming to this section shall be deemed equivalent to a sworn statement. In addition, the summons shall contain a notice to the person that the complaint will be filed with the Circuit Court of the State of Oregon in and for the County of Wasco. The reverse side of the summons shall contain the following in a form substantially as follows:

READ CAREFULLY

You have been charged with a violation of the Wasco County (Land Use Development, Solid Waste) Ordinance. You MUST do ONE of the following:

A. Appear in Court at the time mentioned in this summons and request a hearing. The Court will then set a time for a hearing; or,

B. Mail to the Court this summons, together with a check or money order in the amount of the bail indicated on the other side of this summons and tell the Court you request a hearing. THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT. If you do not want a hearing, but wish to explain your side, send your explanation with the summons and bail. The Court will then consider your explanation and may forfeit your bail or part of it, on the basis of your explanation and what the complainant tells the Court; or,

C. Sign the plea of guilty below and send this summons to the Court, together with check or money order in the amount of bail indicated on the other side of this summons. THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT. NOTE: If you have already given bail or other security for your appearance, proceed as mentioned above but do not send in any additional sum as bail.

APPEARANCE, PLEA OF GUILTY AND WAIVER

I, the undersigned, do hereby enter my appearance on the complaint of the violation charged on the other side of this summons. I have been informed of my right to a trial, that my signature to this plea of guilty will have the same force and effect as a judgment of Court. I do, hereby PLEAD GUILTY to said violation as charged, WAIVE my right to a HEARING by the Court, and agree to pay the penalty prescribed for my violation.

_____

(Defendant's Name)

_____

(Defendant's Address)

MAIL YOUR REMITTANCE TO:

Wasco County Circuit Court
511 Washington Street
The Dalles, Oregon 97058

NOTICE

IF YOU FAIL TO COMPLY WITH THESE INSTRUCTIONS, THE COURT IS AUTHORIZED TO ISSUE A WARRANT FOR YOUR ARREST.

IF YOU FAIL TO DO ONE OF THE THREE FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR TRIAL AT THE TIME SET BY THE COURT YOU MAY BE CHARGED WITH THE ADDITIONAL AND SEPARATE VIOLATION OF FAILURE TO MAKE REQUIRED APPEARANCE.

THE COURT MAY IN ANY CASE, AFTER NOTICE, REQUIRE YOU TO APPEAR FOR A HEARING.

8. Any error in transcribing information into the blanks provided in the citation form when determined by the Court to be non-prejudicial to the Defendant's defense, may be corrected at the time of trial or prior to time of trial with notice being given to the Defendant.

9. Except as provided in Section 15.100(8) above, the complaint shall be set aside by the Court only upon the motion of the Defendant before plea, if it does not conform to the requirements of this Section.

SECTION 15.110 Commencement of Action for Ordinance Violations

A. The Planning Director, Sanitarian, or their designee, may issue a citation for violation of the Wasco County (Land Use Development, or Solid Waste) Ordinances committed in his presence and when committed at any location within the unincorporated area of Wasco County, Oregon, after consulting with the office of the District Attorney.

B. A private person may only commence an action for an Ordinance violation as provided in Section 15.100 of this Chapter and under the same conditions as provided in subsection (A) of this Section. The commencement of all actions by private persons for violations committed in their presence shall be upon the Ordinance citation form and shall be at the discretion and in the judgment of the office of the District Attorney, and conform to the procedures for certification and service as required in Sections 15.100 and 15.120 of this chapter, respectively.

SECTION 15.120 Service of Citation

A. If a citation is commenced as described in Section 15.110 (A), or (B), the Planning Director, Sanitarian, or their designee or peace officer, respectively, shall serve or cause to be served, the summons portion of such citation in one of the following manners:

1. To personally serve the summons portion of the citation on the Defendant. If the Defendant cannot be found personally at his usual abode, then service may be made to a member of his family over fourteen (14) years of age who resides at that abode.

2. If the Defendant is unknown or unavailable for personal service by the citing officer, then the summons portion of the citation, prepared by the Planning Director, Sanitarian, or their designee may be personally served upon the Defendant by any peace officer authorized to serve such citations.

3. If, after reasonable and due diligence, the Defendant cannot be served in the manner prescribed in subsections (1) and (2) hereinabove, service of the summons portion of said citation may be made

by registered mail, return receipt requested, mailed to such person at his last known address with postage prepaid thereon. For the purposes of this Ordinance, service by mail shall be deemed perfected upon filing with the Court the return receipt endorsed by said Defendant. As soon as reasonably possible, provided, however, in no event later that the appearance date, the complainant shall file the complaint portion of the citation with the Clerk of the District Court. When service is not made at the time of commencement of the complaint, proof of service shall be filed immediately after service has been made.

SECTION 15.130 Minimum Requirements for Summons
A summons for an Ordinance violation is sufficient if it contains the following:

A. The name of the Court, name of the person cited, date on which the citation was issued, name of the complainant and the time and place at which the person cited is to appear in Court.

B. A brief description or designation of the offense in such a manner that can be readily understood by a person making a reasonable effort to do so and the date and place in which the violation is alleged to have occurred.

C. A copy of the complaint as set forth in Section 15.100.

SECTION 15.140 Appearance by Defendant
The Defendant shall either appear in Court at the time indicated in the summons, or prior to such time shall deliver to the Court the summons, together with check or money order in the amount of the bail set forth on the summons, together with:

A. A request for a hearing; or

B. A statement of matters and explanation of mitigation of the offense charged; or

C. The executed appearance, waiver of hearing and plea of guilty appearing on the summons.

SECTION 15.150 Effect of Statement and Explanation in Mitigation
If a Defendant has submitted to the Court a written statement as provided in Section 15.140(A)(2), it constitutes a waiver of hearing and consent to judgment by the Court declaring a forfeiture of all or any part of the bail as determined by the Court on the basis of such statement or complainant or other witness who may be presented to the Court.

SECTION 15.160 Fixing Hearing Dates; Notice to Defendant; Failure to Appear; the Separate Offense of Failing to Appear in Court Pursuant to Citation, Summons, Court Order or at the Time Set for Trial of Case

A. If the Defendant requests a hearing, or pursuant to this Section, the Court directs that a hearing be held, the Court shall fix a date and time for hearing and, unless notice is waived, shall be at least (5) days in advance of hearing, mail to Defendant a notice of the date and time so fixed. The notice shall set forth a warning that for failure to appear for the hearing, the Defendant may be charged with a separate and additional offense of failure to appear in Court pursuant to Court order, citation or summons, or at time set for trial of the case.

B. Notice to the Defendant required pursuant to Section 15.160 (A) shall be made in the form of a Court "Notice to Appear" and be placed in the United States mail addressed to the Defendant at his last known address with postage prepaid thereon.

C. Failure of the Defendant to make appearance as set forth in subsection (A) of this Section, will constitute a failure to appear for hearing. If the Defendant fails to appear when notified by the Court to appear pursuant to subsection (B) of this Section, he may be charged with a separate and additional offense of failing to appear in Court pursuant to a Court order, or a citation or summons or at time set for trial of the

case. Upon a finding by the Court that Defendant did not make appearance as required pursuant to this Ordinance without due and good cause, the Defendant shall be guilty of failure to appear.

SECTION 15.170 Hearing Discretionary with Court; Exception

A. For any Ordinance violation for which citation has been issued, the Court may direct that a hearing be held. Otherwise, the Court may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the Defendant and return any amount by which the bail exceeds the fine.

B. No fine may be imposed in excess of the amount of bail deposited by Defendant unless a hearing is held.

SECTION 15.180 Warrant for Arrest

A. If a person cited fails to comply with the provisions of Section 15.130, or if he fails to appear at any time fixed by the Court, a warrant for his arrest may be issued by a judge of the Wasco County Circuit Court pursuant to O.R.S. 133.060.

B. No warrant of arrest may be issued pursuant to this section after a period of sixty days from the date of entry of an order declaring a forfeiture of bail or other security given by the arrested person, unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed the final disposition of the case.

SECTION 15.190 Penalty for Failure to Appear
Upon conviction of any person under Section 15.160(C) of failure to appear without due and good cause, he shall be punished by a fine in addition to the fine and Court costs of the violation for which he failed to appear and such additional fine shall not be more than two hundred and fifty dollars ($250.00).

SECTION 15.200 Planning Commission Membership
The Commission shall consist of seven (7) County residents appointed by the County Court to serve as members for a term of four (4) years or for the unexpired portion of the term of a member whom the appointee succeeds, provided that members of the Commission shall serve without compensation other than reimbursement for duly authorized expenses, and members of the Commission shall be residents of the various geographic areas of the County. No more than two (2) voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two (2) voting members shall be engaged in the same kind of business, trade or profession.

SECTION 15.220 Disqualification
Each appointed member shall serve until his successor is appointed and qualified except that no member of the Commission shall participate in any consideration of matter in which he is directly or indirectly interested in a personal or financial sense.

SECTION 15.230 Officers
The Commission shall:

A. At the first meeting of each calendar year elect from among their appointed members, to serve for no longer than twelve (12) months, a Chairman for their body. He shall preside at all meetings, shall appoint and serve ex officio upon all committees, shall compel the attendance of members and witnesses, shall administer oaths, and sign the minutes of meetings after the same be approved by the body.

B. At said meeting, select from among their appointed members, to serve no longer than twelve (12) months, as Vice-Chairman for their body. He shall perform the duties of Chairman whenever that officer is absent, ill, disqualified or otherwise unable to act.

SECTION 15.240 Legal Advisor

~~The District Attorney or his deputy shall act as legal advisor to the Commission and represent them in all litigation, provided that when he determines a conflict of interest prevents such service, he may authorize either body to retain other counsel.~~

~~SECTION 15.250~~ Meetings
~~The Commission shall meet upon call of the Chairman pursuant to such rules as they may from time to time adopt. Meetings of the Commission shall normally be held monthly or as required, in which case the Commission shall decide upon the day to meet at its previous meeting. All meetings shall be public. All meetings of the Commission shall be publicized by giving notice thereof in a newspaper of general circulation not less than fifteen (15) days before the meeting.~~

AMENDMENTS CHAPTER 19

Because the bulk of the substantive changes related the amendments are located in Chapter 19, the text of the entire amended Chapter is included.

CHAPTER 19 STANDARDS FOR NON COMMIERCIAL ENERGY FACILITIES, COMMERCIAL ENERGY FACILITIES & RELATED USES

SECTION 19.010 Purposes

This chapter describes the requirements for establishing non-commercial energy facilities, commercial energy facilities and related uses (as included) in Wasco County. The goals of this chapter are to:

- Encourage renewable energy production;
- Utilize clear and objective standards;
- Establish a clear, consistent and accountable application process;
- Collaborate and coordinate with agencies and other stakeholders;
- Minimize conflict with other permitted uses through compatibility review;
- Protect resources identified in the Wasco County Comprehensive Plan; and
- Protect the public health, safety and general welfare of the citizens of Wasco County.

The uses described in this chapter are only allowed if listed in the zoning section in Chapter 3 applicable to the subject property.

SECTION 19.020 Non-Commercial/Stand Alone Power Generating Facilities & Related Uses Review Processes & Approval Standards

A. Review Processes - Non-commercial/Stand Alone Power Generating Facilities & Related Uses (energy facilities) shall be reviewed pursuant to the following. Where standards are less restrictive than comparative standards in other sections, the more restrictive shall govern.

1. Towers - This shall include free standing (Wind Turbine & Meteorological) or roof mounted towers/turbines.

Tower Height	Property Size

	<2 Acres	2 - < 5 Acres	5 - < 10 Acres	> = 10 Acres
Non-Resource Zones				
< = 35'	*Type I	*Type I	Type I	Type I
> 35' - < 50'	Type II - STS	Type II - STS	Type I	Type I
50' - < 100'	Type II - CUP	Type II - STS	Type II - STS	Type II - STS
100' - 150'	Type II - CUP	Type II - CUP	Type II - CUP	Type II - STS
Resource Zones				
< 35'	*Type I	*Type I	Type I	Type I
35' - < 50'	Type II - STS	Type II - STS	Type I	Type I
50' - < 100'	Type II - CUP	Type II - STS	Type II - STS	Type II - STS
100' - < 200'	Type II - CUP	Type II - CUP	Type II - STS	Type II - STS
> = 200'	Type II - CUP	Type II - CUP	Type II - CUP	Type II - CUP

*The 4th tower sited on the property shall elevate the review from a Type I to an STS.

Wind turbines that are attached to other lawful uses (excluding roof mounted turbines) including but not limited to street lamps and telephone poles are not subject to the standards of chapter 19. They shall be subject to the same standards and review process as the use to which they are attached as outlined in the applicable zone.

2. Solar Systems

System Size	Property Size				
	<2 Acres	2 - < 5 Acres	5 - < 10 Acres	10 - < 40 Acres	> = 40 Acres
Roof Mounted < = 35' in height	Type I	Type I	Type I	Type I	Type I

*Roof Mounted > 35' in height	STS	STS	STS	Ministerial	Ministerial
**Ground Array < 500 sq. ft.	Type I	Type I	Type I	Type I	Type I
**Ground Array 500 - < 1,500 sq. ft.	Type II – STS	Type II - STS	Type II - STS	Type II - STS	Type I
**Ground Array > = 1,500 sq. ft.	Type II – CUP	Type II - CUP	Type II - CUP	Type II - CUP	Type II – STS

*Roof mounted systems exceeding 35' in height shall be allowed without a variance pursuant to either Chapter 6 or 7.

**Ground Arrays are limited to 35' in height. Ground Arrays exceeding 35' in height will be required to apply for a variance pursuant to either Chapter 6 or 7.

Small solar systems (less than 10 square feet) that are accessory to other lawful uses including but not limited to gates, electric fences & lights are not subject to the standards of chapter 19. They shall be subject to the same standards and review process as the use to which they are accessory as outlined in the applicable zone.

Multiple panels, multiple arrays and supporting equipment providing energy to the same structure or use shall be considered one (1) system in determining the applicable review process. If a portion of the system is already installed and the permit holder is creating an addition to the system, the applicable review process shall be based on the total size of the system.

3. OWRD -Hydroelectric Facilities:

   a. Not Located within an Area of Special Flood Hazard - Hydroelectric energy projects not located within an Area of Special Flood Hazard are not required to meet property development standards within the zone they are being located. If located in a non-resource zone they are allowed without any review by the Planning Department as long as they are being reviewed by the OWRD. If located in a resource zone they are required to be reviewed as a "utility facilities necessary for a public use", "reservoir", or water impoundment".
   b. Located within an Area of Special Flood Hazard – In addition to a. above, hydroelectric energy facilities located within an Area of Special Flood Hazard are subject to Section 3.740, Flood Hazard Overlay by the Planning Department even if they are being reviewed by the OWRD.

4. Additional Non-Commercial/Stand Alone Power Generating Facilities - The review process for energy facilities other than those previously described will be decided by the Planning Department based on an evaluation of the primary purpose of the zone, the size of the subject property and surrounding properties, the proposed location of the use

and its potential impact to adjacent properties. Impacts include but are not limited to noise, vibration, smell, emissions, visibility, or physical footprint.

B. Type I Review Standards - The following are applicable to energy facilities in addition to meeting the property development standards of the zone, unless otherwise specified, and any other listed or referenced standards.

1. General Standards for all Energy Facilities:

a. Lawful Use - Power will be for a lawfully established use or use that is in the process of being reviewed by the Planning Department.

b. Interconnect Agreement (Net Metering Only) - The applicant shall provide an interconnect agreement with a local utility or copy of a submitted application requesting an interconnect agreement with a local utility.

c. Closed System (Non-Commercial Stand Alone Only) - The applicant shall provide a plan or diagram that proves the proposal is a closed system and will not tie into a utility.

d. Setback/Buffers - Unless otherwise specified in this chapter, all energy facilities shall meet the property line setbacks of the zone in which they are located, natural resource buffers, as well as any additional setbacks required below.

e. Height - Unless otherwise specified in this Chapter, Pursuant to Section 4.070, General Exceptions to Building Height Requirements, energy facilities shall be exempt from the height limits of the zone in which they are located.

f. Color/Visibility - Energy facilities and their accessory electrical control equipment shall be a non-reflective, unobtrusive color that blends in with the surrounding environment unless otherwise required by the Federal Aviation Administration or Oregon Department of Aviation.

g. Noise – Manufacturer's sound power level shall not exceed 60 db(A).

h. Air Quality - Manufacturer's emissions estimate shall be in compliance with Oregon Department of Environmental Quality in OAR Chapter 340, Division 200.

i. Vibration - Vibrations shall not be produced which are humanly perceptible beyond the property on which the energy facility is located.

j. Odor – To the extent practicable, odors shall not be produced which are humanly perceptible beyond the property on which the energy facility is located.

k. Health & Safety:

(1) All uses or structures shall be designed and constructed to limit access.

(2) Warning and safety signs, up to three square feet in area, are allowed.

(3) All ground mounted electrical and control equipment shall be labeled or secured

to prevent unauthorized access.

(4) The manual electrical and/or overspeed shutdown disconnect switch(es) shall be clearly labeled.

(5) Utility facility service lines, electrical lines and other wires associated with the energy facility that are not underground shall be kept clear along the route and have a single point of access to the building to the maximum extent practicable while still complying with local, state, and federal electrical codes.

(6) Uses and structures shall be designed and constructed to not impair emergency response. Contact local emergency responder for specific requirements and guidance.

(7) Energy facilities shall be kept and maintained in good repair and condition at all times and shall not pose a potential safety hazard.

l. Advertising - No commercial or advertising markings shall be allowed except those of the manufacturer & installer.

m. Interference with Communication - Energy facilities shall not create any material signal interference with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. Should any material interference occur, the property owner must develop and implement a mitigation plan in consultation with the Planning Department.

n. Decommissioning/Removal - Any facility that is inoperable for more than 12 months shall be deemed discontinued. Removal of the equipment and facilities shall occur within six (6) months of the discontinuance time frame or other time frame approved by the Planning Department unless all or a portion of the equipment and facilities are converted to an approved use within this same time frame.

o. Other Authority - All necessary local, state and federal authorizations/permits shall be obtained prior to constructing the use.

2. Specific Standards:

a. Tower Standards

(1) Setbacks

(a) The base of the tower shall be set back from all property lines, public-rights-of-ways, and above ground public utility lines a distance equal to the height of the tower (i.e., fall height). The setback shall be measured to the center of the tower's base.

(b) Notwithstanding receiving permission from an affected property owner(s), road authority or utility, towers shall still be required to meet the property lines setbacks of the zone in which they are located and all natural resource buffer requirements unless a variance is granted pursuant to either Chapter 6 or 7.

(c) Any guy wires associated with a tower shall be required to meet the property and buffer setbacks of the zone in which they are located unless a variance is granted pursuant to either Chapter 6 or 7.

(2) Safety:

(a) Blade Reach - The lowest extension of any exposed blade or other exposed moving component shall be at least fifteen (15) feet above the ground (at the highest point of the grade level within fifty (50) feet of the base of the tower) and, in addition, at least fifteen (15) feet above any outdoor surfaces intended for human occupancy, such as balconies, that are located directly below the blade.

The minimum height may be reduced if a safety fence is installed around the area of the exposed blade or other moving component that would prevent access and direct contact with the exposed blade or other moving component. The minimum height may also be reduced through the Type II /STS review process in subsection C below.

(b) Wind turbines shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, over-speeding and excessive pressure on the tower structure, rotor blades and other wind energy components unless the manufacturer certifies that a braking system is not necessary.

(c) Towers shall be equipped with lightning protection.

(d) Towers shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

(e) "Danger" signs shall be posted at the height of five feet on the tower if it has a climbing apparatus.

(f) Permit holders are encouraged to sheath guy wires in a covering that would increase their visibility from a height of three feet above ground to eight feet above ground.

(3) Avian Protections - Perch deterrents shall be placed on all surfaces that would attract birds to a location where they could be struck by a moving component on the tower such as the sweep of a wind turbine blade.

(4) Lighting - Lighting of towers subject to only a Type I review is not allowed.

b. Solar System Standards:

(1) Safety

(a) Roof mounted solar panels shall be installed in a manner that maintains adequate fire department access to the roof, with an unobstructed path from the structures eaves to structure components located on the roof (i.e., chimney, stove pipe, other roof mounted appliances). Contact local fire official for specific requirements and guidance.
(b) Ground arrays shall maintain a ten feet (10') perimeter of fire fuel break. Refer to Section 10.120 of the Fire Safety Standards for a description of a fire fuel break.

(2) Solar Access Rights - The establishment of a solar system consistent with the requirements of this ordinance shall not constitute solar access rights that are protected by this ordinance.

C. Type II Review Standards - The following are applicable to energy facilities in addition to meeting the Type I Review Standards in subsection B above, the property development standards of the zone, unless otherwise specified, and any other listed or referenced standards.

1. General Standards for all Energy Facilities

a. General Compatibility - The proposed use is compatible with adjacent surrounding properties taking into consideration the following:

(1) Scale
(2) Odors
(3) Vibration

b. Noise - If the manufacturer's sound power level exceeds 60 db(A) or there is no manufacturer's stated sound power level, the applicant shall submit an analysis from a qualified consultant or individual and written report to prove operation of the energy facility shall be in compliance with sound pressure noise regulations established by the Oregon Department of Environmental Quality in OAR Chapter 340, Division 35 with regard to any existing dwellings on non-participating landowners property. These regulations shall govern notwithstanding the energy facility is neither a commercial or industrial use.

2. Specific Standards:

a. Tower Standards:

(1) Aviation Notification - Planning staff shall notify the following groups or agencies as to the location of the proposed tower(s). Comments received regarding safety may be included as safety features required in subsection (2) below.

(a) Aerial Sprayers and operators who have requested to be notified - All towers over 50' in height.
(b) Oregon Department of Aviation (ODA) & Federal Aviation Administration (FAA) - All towers over 200 feet in height or as prescribed by OAR 738-070-0110.

(2) Aircraft Safety Plan - A safety plan shall be submitted that will ensure aircraft safety is maintained for all towers 50' in height or greater. Unless a determination of no hazard is made, safety features will be required as necessary to ensure aircraft safety based on the location, height, and type of tower. Any safety features required as part of an approval shall be completed at the time the tower is installed. Safety features, if required, could include but are not limited to the following:

(a) Placing an aviation device, or equivalent visible marker at each of the outermost guy wire anchors.
(b) Painting the top 30 feet of each tower with 5 foot bands of alternating colors of Aviation Orange and Aviation White.
(c) Lighting - Lighting of towers shall be evaluated on a case by case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.

(3) Minimum Height - The lowest extension of any exposed blade or other exposed moving component may be allowed less than (15) feet above the ground as required by subsection B(2)(a)(2) if based on the proposed location and site specific circumstances, the tower will not represent a safety hazard.

(4) Shadow Flicker – Upon the non-participating owner's request, the applicant shall demonstrate that the wind turbines, taking into account mitigation measures, will have no significant adverse impact of shadow flicker on an existing dwelling of a non-participating landowner within ¼ mile (1,320 feet) from a turbine, measured from the centerline of the turbine to the centerline of the dwelling.

Towers shall be allowed to create an adverse shadow flicker impact to an existing dwelling on a non-participating landowner's property if written permission from the property owner and an adjustment is granted under Section 19.030(D)(1)(c). Said written permission shall be made part of the deed records of the non-participating landowner's property.

b. Solar Standards:

(1) Ground Leveling - The solar energy facility shall be designed and constructed to minimize ground leveling and to the extent reasonably practicable, limit ground leveling to those areas needed for effective solar energy collection.

(2) Misdirection of Solar Radiation - The solar energy facility shall be designed, constructed, and operated to prevent the misdirection of concentrated solar radiation onto nearby properties, public roadways or other areas accessible to the public.

(3) Glare - The solar energy facility shall be designed, constructed and operated such that any significant or prolonged glare is directed away from any nearby properties or public roadways.

(4) Cleaning Chemicals and Solvents - During operation of the solar energy facility, all chemicals or solvents used to clean solar panels or heliostats shall be low in volatile organic compounds and to the extent reasonably practicable, the permit holder shall use recyclable or biodegradable products.

D. CUP/Type II Review Standards - Energy facilities subject to conditional use review shall meet the standards of Chapter 5, Conditional Use Review, the Type I Review Standards in subsection B above, the Type II Review Standards in subsection C above, the property development standards of the zone, unless otherwise specified and any other listed or referenced standards.

SECTION 19.030 Commercial Power Generating Facilities Review Processes & Approval Standards

A. Review Processes - Commercial Power Generating Facilities & Related Uses (energy facilities) shall be reviewed pursuant to the following. Where standards are less restrictive than comparative standards in other sections, the more restrictive shall govern.

1. Review Authority:

a. Planning Commission Review – Notwithstanding applications reviewed by EFSC and unless otherwise specified all energy facilities reviewed pursuant to this section shall be initially heard and decided upon by the Planning Commission in a public hearing.

b. Planning Department Review:

(1) Small Scale Commercial Power Generating Facilities - A commercial power generating facility shall be considered small scale if it falls within either the tower or solar matrix listed in Section 19.020, Non-Commercial Power Generating Facilities and shall be reviewed by the Planning Department pursuant to the standards of Section 19.020 and not this section.

For non-resource zones, solar arrays shall be limited to ¼ acre and towers to no more than 150' in height and no more than 4 towers per property. For resource zones solar arrays shall be limited to ½ acre and towers to under 200' in height and no more than 4 towers per property shall be reviewed by the Planning Department. Beyond these limits the energy facility will not be considered small scale and will only be allowed pursuant to the standards in this section.

(2) Community Projects - Renewable projects of 10MW or less which include a partnership between a local land owner and a community (public) organization such as Wasco County, Mid-Columbia Council of Governments, a city, or a school district, shall be reviewed by the Planning Department.

(3) Post EFSC Review - Pursuant to ORS 469.401, after issuance of a site certificate by EFSC pursuant to subsection c. below, and subject to receiving the proper fees, Wasco County will issue in an expedited manner any permits, licenses and

certificates addressed in the site certificate subject only to conditions set forth in the site certificate but without hearings or other proceeding (i.e., Type I review).

(4) Hydroelectric Energy Facilities - See subsection d. below.

c. EFSC Review:

(1) EFSC has regulatory authority over all energy facilities designated by ORS 469.300. However, pursuant to ORS 469.480 EFSC shall designate the BOC as a Special Advisory Group. As such and at their discretion the BOC may participate in the siting process pursuant to the role established in ORS 469 and OAR 345, which includes recommending substantive criteria applicable to the proposed energy facility.

(2) Pursuant to ORS 469.320(8), notwithstanding the threshold limits in ORS 469.300, an applicant can elect to have EFSC review an energy facility that may otherwise be subject to Wasco County's jurisdiction.

(3) If for any reason the BOC desires, they may defer regulatory authority of energy facility to EFSC notwithstanding it is less than the threshold designated by ORS 469.300.

d. OWRD Review - Hydroelectric Energy Facilities:

(1) Not Located within an Area of Special Flood Hazard - Hydroelectric energy facilities not located within an Area of Special Flood Hazard are not required to meet property development standards within the zone they are being located. If located in a non-resource zone they are allowed without any review by the Planning Department as long as they are being reviewed by OWRD or FERC. If located in a resource zone they are required to be reviewed as a "utility facilities necessary for a public use".

(2) Located within an Area of Special Flood Hazard - In addition to d.(1). above, hydroelectric energy facilities located within an Area of Special Flood Hazard are subject to Section 3.740, Flood Hazard Overlay by the Planning Department even if they are being reviewed by the OWRD or FERC.

e. FERC Review - FERC has regulatory authority over all energy or related projects of a size, scale or interest to the federal government pursuant to Title 18, Conservation of Power and Water Resources, of the Code of Federal Regulations.

2. County Decision Options - As part of the application materials the applicant shall indicate if they are requesting tentative or final approval. For facilities sited through EFSC, this section does not apply.

a. Tentative Approval - A tentative approval may be issued when the applicant has submitted most of the required application materials but defers completion of one or more required discretionary elements such as the wildlife plan and all of its required baseline studies. Any deferred discretionary elements will be the only elements reviewed and decided upon during the final approval process.

A tentative approval shall specify a time limit or expiration date within which all deferred discretionary review elements or plans shall be reviewed for final approval. Pursuant to Section 2.125, Time Limits for Permits and Extensions of Time, the combined time for both the tentative and final approval shall be limited to 2 years with the opportunity for a onetime 2 year extension. This time frame shall start on the date of the tentative approval.

b. Final Approval - Final approval occurs when the applicant has submitted all of the required application materials, Wasco County has issued a decision which includes conditions of approval that can be submitted for staff review and verification, and the appeal period has concluded.

3. Modifications - An amendment to the conditional use permit shall be required if the proposed facility changes would:

   a. Require an expansion of the established facility boundaries where the original facility was sited or constructed;
   b. Increase the number of towers; or
   c. 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.

B. Non-Resource Zone Standards:

1. Small Scale Commercial Power Generating Facilities - Pursuant to Subsection A(1)(b)(1) above, commercial power generating facilities that are considered small scale will be allowed in non-resource zones subject to the standards of Section 19.020.

2. Large Scale Commercial Power Generating Facilities - Except for related or supporting facilities, large scale commercial power generating facilities shall not be allowed in non-resource zones.

3. Related or Supporting Facilities (Reasonable Alternatives Analysis) - Related or supporting facilities to a commercial power generating facility may be allowed in non-resource zones subject to Conditional Use Review upon a showing that such related or supporting facilities are necessary for siting the commercial power generating facility. To the extent practicable, any related or supporting facilities must be consistent in size, scale, and impact as other existing or allowed uses in the non-resource zone. Related or Supporting Facilities shall be reviewed as part of the Commercial Power Generating Facility and not subject to a separate Conditional Use Review. To demonstrate the related or supporting facilities are necessary within the meaning of this section, an applicant must show that reasonable alternatives have been considered and that the related or supporting facilities must be sited in a non-resource zone after considering the following factors:

   a. Technical and engineering feasibility of siting the energy facility as a whole;
   b. Availability of existing rights-of-ways and public roads and proximity to transmission lines and interconnections;
   c. Environmental impacts associated with avoiding non-resource zoned land; and

d. Protection of farm and forest resources.

C. General Standards - The following standards apply to energy facilities as outlined in Section A above, in addition to meeting the Conditional Use Standards listed in Chapter 5:

1. Air Safety - All structures that are more than 200 feet above grade or, exceed airport imaginary surfaces as defined in OAR Chapter 738, Division 70, shall comply with the air hazard rules of the Oregon Department of Aviation and/or Federal Aviation Administration. The applicant shall notify the Oregon Department of Aviation and the Federal Aviation Administration of the proposed facility and shall promptly notify the Planning Department of the responses from the Oregon Department of Aviation and/or Federal Aviation Administration.

   Aerial Sprayers and operators who have requested to be notified will receive all notifications associated with the energy facility as required by Chapter 2, Development Approval Procedures.

2. Interference with Communications - The energy facility shall be designed, constructed and operated so as to avoid any material signal interference with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. Should any material interference occur, the permit holder must develop and implement a mitigation plan in consultation with the Planning Department.

3. Noise - The energy facility shall comply with the noise regulations in OAR Chapter 340, Division 35. The applicant may be required to submit a qualified expert's analysis and written report.

4. Visual Impact

   a. Scenic Resources – To issue a conditional use permit for an energy facility, the county must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources or values identified as significant or important in the Wasco County Comprehensive Plan.
   b. Protected Areas: Except as provided in subsections (b) and (c) below, an energy facility shall not be located in the areas listed below:

      (1) National recreation and scenic areas, including but not limited to the Columbia River Gorge National Scenic Area;

      (2) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

      (3) State parks and waysides as listed by the Oregon Department of Parks and Recreation;

      (4) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(5) National and state fish hatcheries or national and state wildlife refuges;

(6) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(7) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782; and

a. Exceptions to Protected Areas - Except where the following uses are regulated by federal, state or local laws, including but not limited to the Columbia River Gorge National Scenic Area Act and implement land use ordinances, the following may be approve in a protected area identified in subsection (b) above if other alternative routes or sites have been studied and been determined to have greater impacts:

- An electrical transmission line;
- A natural gas pipeline; or
- An energy facility located outside a protected area that includes an electrical transmission line or natural gas or water pipeline as a related or supporting facility located within a protected area.

b. Transmission Line & Pipeline Exception - The provisions of subsection (b) above do not apply to electrical transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line or one natural gas pipeline.

c. Additional Visual Mitigation Impacts for all Facilities - The design, construction and operation of the energy facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified in subsection (b) above. Methods to mitigate adverse visual impacts could include but are not limited to:

(1) Building the energy facility near the edge of contiguous timber areas or using the natural topography to obscure the energy facility;
(2) Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation; and
(3) Retaining or planting vegetation to obscure views of the energy facility.

5. Natural Resource/Wildlife Protection - Taking into account mitigation, siting, design, construction and operation the energy facility will not cause significant adverse impact to important or significant natural resources identified in the Wasco County Comprehensive Plan, Wasco County Land Use and Development Ordinance or by any jurisdictional wildlife agency resource management plan adopted and in effect on the date the application is submitted. As appropriate, the permit holder agrees to implement monitoring and mitigation actions that Wasco County determines appropriate after consultation with the Oregon Department of Fish and Wildlife, or other jurisdictional

wildlife or natural resource agency. Measures to reduce significant impacts may include, but are not limited to the following:

a. Providing information pertaining to the energy facility's potential impacts and measures to avoid impacts on:

   (1) Wildlife (all potential species of reasonable concern);
   (2) Wildlife Habitat;
   (3) Endangered Plants; and
   (4) Wetlands & Other Water Resources.

b. Conducting biologically appropriate baseline surveys in the areas affected by the proposed energy facility to determine natural resources present and patterns of habitat use.

c. Selecting locations to reduce the likelihood of significant adverse impacts on natural resources based on expert analysis of baseline data.

d. Utilizing turbine towers that are smooth steel structures that lack features that would allow avian perching. Where horizontal surfaces cannot be avoided, anti-perching devices shall be installed where it is determined necessary to reduce bird mortality.

e. Designing and installing all aboveground transmission line support structures following the current suggested practices for avian protection on power lines published by the Avian Power Line Interaction Committee.

f. Utilizing towers and transmission line support structures designed so the foundation area and supports avoid the creation of artificial habitat or shelter for raptor prey.

g. Controlling weeds to avoid the creation of artificial habitat suitable for raptor prey such as spreading gravel on turbine pad.

h. Avoiding construction activities near raptor nesting locations during sensitive breeding periods and using appropriate no construction buffers around known nest sites.

i. Locating transmission lines or associated transmission lines with the energy facility to minimize potential impacts (e.g., 50 feet from the edge of the nearest wetland or water body except where the line is required to cross the wetland or water body; or separating transmission lines or associated transmission lines with the energy facility from the nearest wetland or water body by topography or substantial vegetation to the extent practical, except where the line is required to cross the wetland or water body).

j. Locating transmission towers or associated transmission towers outside of Class I or II streams unless:

   (1) Adjoining towers and conductors cannot safely and economically support the line(s) that span the stream without an in-stream tower; and

   (2) The lines cannot be safely and economically placed under the water or streambed.

(3) Developing a plan for post-construction monitoring of the facility site using appropriate survey protocols to measure the impact of the project on identified natural resources in the area.

6. Protection of Historical and Cultural Resources - The applicant shall complete a cultural resources survey of areas where there will be temporary or permanent disturbance. During construction, cultural resources included in the Wasco County Comprehensive Plan shall be flagged and avoided in areas of potential temporary or permanent disturbance, and construction activities monitored to ensure all cultural resources in such areas are avoided, unless appropriate permits are obtained from the Oregon State Historic Preservation Office. Prior to construction an Inadvertent Discovery Plan (IDP) shall be developed that must outline the procedures to be followed in the case previously undiscovered archeological, historical or cultural artifacts are encountered during construction or operation of the energy facility, in compliance with ORS 358.905-358.955 and any other applicable local, state and federal law.

7. Fire Protection & Emergency Response - A fire protection and emergency response plan shall be developed and implemented in consultation with the applicable fire district or department and/or land management agency to minimize the risk of fire and respond appropriately to any fire or emergency that occurs onsite for all phases of the life of the facility. In developing the plan the applicant shall take into account, among other things, the terrain, dry nature of the region, address risks on a seasonal basis, and identify the locations of fire extinguishers, nearby hospitals, telephone numbers for emergency responders, and first aid techniques.

8. Public Safety - A public safety plan shall be developed and implemented to exclude members of the public from hazardous areas within the Energy Facility Project Area.

9. Transportation Plan - A transportation plan shall be developed and implemented in consultation with the Wasco County Road Department and/or the Oregon Department of Transportation (ODOT). The plan shall be consistent with any applicable requirements from the Wasco County Transportation System Plan and shall also provide or address:

   a. The size, number, and location of vehicle access points off of public roads.

   b. Use of existing roads to the extent practical to minimize new access roads.

   c. Restoring the natural grade and revegetating all temporary road cuts, used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

   d. A Road Impact Assessment/Geotechnical Report for roads to be used by the project. Said report should include an analysis of project-related traffic routes to be used during phases of construction, project operation and decommissioning. The report and any subsequent amendments shall be used as a discipline study and shall be incorporated into the Road Use Agreement between the Applicant and the County.

10. Road Use Agreement - Where applicable, the Wasco County Road Department shall require the applicant to enter into a Road Use Agreement with the County to ensure that project construction traffic is mitigated and any damage to county roads that is caused by the construction of the energy facility or its related or supporting facilities is repaired by the applicant, and such county roads are restored to pre-construction conditions or better (this includes a weed plan and providing for re-vegetation).

    - General design standards for roads shall, in general, conform to policies set forth in Chapter 21.
    - As part of the Road Use Agreement the applicant shall also obtain a utility permit for all project utility installation and approach permits for road approach access to county roads.

11. Onsite Access Roads and Staging Areas - The impact of onsite access roads and staging areas within the Energy Facility Project Area shall be limited by:

    a. Constructing and maintaining onsite access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site;
    b. Using existing onsite access roads to the extent practical and avoiding construction of new on-site access roads as much as possible; and
    c. Restoring the natural grade and revegetating all temporary access roads, road cuts, equipment staging areas and field office sites used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

12. Dust Control - All approved non-paved temporary or permanent roads and staging areas within the Energy Facility Project Area shall be constructed and maintained to minimize dust, which may be addressed through the Road Use Agreement. If roads and staging areas are not construct with material that would prevent dust, the permit holder must regularly water roads and staging areas as necessary or apply an approved dust suppression agent such as Earthbind 100 to minimize dust and wind erosion.

13. Erosion and Sediment Control - All ground disturbing activities shall be conducted in compliance with a National Pollutant Discharge Elimination System (NPDES) permit as may be required by Oregon Department of Environmental Quality. Where applicable, an NPDES permit must be obtained. The plan must include best management practices for erosion control during construction and operation and permanent drainage and erosion control measures to prevent damage to local roads or adjacent areas and to minimize sediment run-off into waterways.

14. Weed Control - A weed plan shall be developed in consultation with the Wasco County Weed Department and implemented during construction and operation of the energy facility.

15. Signs - Outdoor displays, signs or billboards within the energy facility project boundary shall not be erected, except:

a. Signs required for public or employee safety or otherwise required by law; (e.g., OSHA or compliance with the Manual of Uniform Traffic Control Devices (MUTCD) administered through the County Road Department); and
b. No more than two signs relating to the name and operation of the energy facility of a size and type to identify the property for potential visitors to the site, but not to advertise the product. No signs for advertising of other products are permitted.

16. Underground Systems - Where reasonably practicable, power collector and communication systems shall be installed underground, at a minimum depth of 3 feet. Shallower depths may be authorized where notification and safety measures are taken and wires are placed in schedule 40 conduit. The cable collector system shall be installed to prevent adverse impacts on agriculture operations and natural resources.

17. Operation & Maintenance Buildings - Permanent maintenance/operations buildings shall be located in the same zone as the principal energy facility, except that such buildings may be constructed in a separate zone if:

    a. The building is designed and constructed generally consistent with the character of similar buildings used in the surrounding area; and
    b. The building will be removed or converted to another approved use upon decommissioning of the energy facility consistent with the provisions of this ordinance.

18. Coordination and Documentation - Prior to commencement of any construction, all other necessary permits shall be obtained, e.g. building permit, rural address, road approach, utility and other permits from the Wasco County Public Works Department, and/or from ODOT as well as any other applicable local, state or federal permits or approvals.

19. Termination and Decommissioning. For an energy facility sited through EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with these requirements.

    a. The applicant shall prepare a decommissioning plan that describes the actions 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.

    b. The applicant shall provide a detailed cost estimate, a comparison of that estimate with funds to be set aside, in the form of a financial assurance (bond, letter of credit, insurance policy other such form of guarantee acceptable to Wasco County), and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate and financial assurance may take into account salvage value associated with the project, and can be requested for review and update by Wasco County at their discretion (e.g., every 5 years).

c. The following shall be required as conditions of the Wasco County approval:

(1) If operation of the energy facility ceases or begins construction of the project, but does not complete it, the permit holder shall restore the site according to a plan approved by Wasco County. A plan shall be submitted that ensures the site will be restored to a useful, non-hazardous condition without significant delay, including but not limited to the following:

a. Removal of aboveground and underground equipment, structures and foundations to a depth of at least three feet below grade (four feet if cropland). Underground equipment, structures and foundations need not be removed if they are at least three feet below grade and do not constitute a hazard or interfere with agricultural use or other resource uses of the land. Restoration of the surface grade and soil after removal of aboveground structures and equipment.
b. Removal of graveled areas and access roads and restoration of surface grade and soil.
c. Revegetation of restored soil areas with native seed mixes, plant species suitable to the area, consistent with Wasco County's weed control plan.
d. For any part of the energy facility on leased property, the plan may incorporate agreements with the landowner regarding leaving access roads, fences, gates or buildings in place or regarding restoration of agricultural crops or forest resource land. Said landowner will be responsible for maintaining said facilities for purposes permitted under applicable zoning.
e. The underground power collector and communication lines need not be removed if at a depth of three feet or greater. These cables 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.
f. The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration.
g. The plan must include a schedule for completion of site restoration work.

(2) Before beginning construction of the energy facility, the permit holder must submit in a form and amount satisfactory to Wasco County, assuring the availability of adequate irrevocably committed funds to restore the site to a useful, non-hazardous condition naming Wasco County as beneficiary or payee. The form may include posting a bond, issuing an irrevocable letter of credit, purchasing a paid up insurance policy or by other means acceptable by Wasco County and shall ensure continuity between owners.

(3) The amount of the financial assurance (bond or other such form of guarantee) shall be annually adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"). The permit holder (including possible successor if sold or transferred) shall increase the amount of the financial assurance annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the Index is no longer published, Wasco County shall select a comparable index for adjusting the

amount. The amount of the financial assurance shall be prorated within the year to the date of decommissioning.

(4) Per the request of Wasco County, the permit holder (including possible successor if sold or transferred) shall describe the status of the financial assurance in a report (e.g., annual update report submitted to Wasco County).

(5) The financial assurance shall not be subject to revocation or reduction before retirement of the energy facility site.

20. Final Location - The actual latitude and longitude location or Oregon State Plane NAD83 HARN (international feet) coordinates of the energy facility and related or supporting facilities shall be provided to the County GIS Department once commercial electrical power production begins. Alternatively, this information could be provided in GIS layer consistent with the datum referenced above or any other datum deemed acceptable by the Wasco County GIS Department.

21. Power Production Reporting - The County may require a report of nonproprietary power production for any time frame after the energy facility first begins production if permitted through the County. If requested, the permit holder shall have 180 days to produce said report.

D. Specific Standards - The following standards apply to specific types of energy facilities as described, in addition to the General Standards in Section C above.

1. Wind Energy Facilities:

a. Visual Impact - To the extent practical, the proposed wind energy facility has been designed to minimize visual impact upon open space and natural landscape by:

1. Using underground communication and power collector lines (transmission lines that connect each turbine to a substation);

2. Using turbine towers of uniform design, color and height;

3. Lighting - Lighting of towers shall be evaluated on a case-by-case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.

4. Using existing roads within the Energy Facility Project Area to provide access to the site, or if new roads within the Energy Facility Project Area are needed, minimizing the amount of land used for new roads and locating roads to reduce visual impact;

5. Using existing substations, or if new substations are needed, minimizing the number of new substations; and

6. Shadow Flicker – Upon the non-participating owern's request, the applicant shall demonstrate that the wind turbines, taking into account mitigation measures, will have no significant adverse impact of shadow flicker on an existing dwelling of a non-participating landowner within ¼ mile (1,320 feet) from a turbine, measured from the centerline of the turbine to the centerline of the dwelling.

   Towers shall be allowed to create an adverse shadow flicker impact to an existing dwelling on a non-participating landowner's property if written permission from the property owner and an adjustment is granted under Section 19.030(D)(1)(c). Said written permission shall be made part of the deed records of the non-participating landowner's property.

b. Public Safety - The wind energy facility shall be designed, constructed, and operated to protect the public by measures that may include, but are not limited to, the following:

   (1) Installing the tower so at the closest point, the sweep of any exposed blade or other exposed moving component is at least 20 feet above the tallest existing or foreseeable obstruction to blade movement unless based on the proposed location and site specific circumstances, the tower will not represent a safety hazard; and

   (2) Designing, constructing and operating the energy facility to exclude members of the public from close proximity to turbine blades and electrical equipment, including installing locks on turbine tower access doors; and

   (3) Designing, constructing and operating the energy facility to protect against structural failure of the turbine tower or blades that could endanger members of the public's safety, including having adequate safety devices and testing procedures designed to warn members of the public of impending failure and to minimize the consequences of such failure.

c. Setbacks:

   (1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

   (2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries described in (3)(C) below. Wind turbines shall to meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings

a. Participating Landowners: For owners of legal resource dwellings who are also landowners in the Energy Facility Project Area, wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction, provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

b. Non-Participating Landowners: For owners of legal resource dwellings who are not landowners in the Energy Facility Project Area, wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

c. Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon findings that the following criteria are met:

1. Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility.
2. The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
3. The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
4. The proposed adjustment will not unduly burden existing infrastructure.
5. The proposed adjustment will not unduly impair safety in the area.
6. The proposed adjustment will minimize impacts to environmental resources.

(4) Non-Resource Boundaries - Wind turbines shall be setback:

(a) A minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of urban growth boundaries and urban reserves (as measured from the centerline of the turbine to the edge of the property

boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these properties. .

(b) 3/4 mile (3,960 feet) from the established city limit or urban growth boundary or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision

(c) The distance required to meet the DEQ noise standard (OAR 340-035-0035) unless a noise easement is obtained under OAR 340-035-0035.

(d) Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized by upon findings that the following criteria are met:

1. Written Consent:

    i Proposal for administrative adjustment relating to incorporated cities shall include written authorization from the appropriate city authority.
    ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different than city limits) shall include written consent from all owners directly impacted by the proposed adjustment.

2. The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
3. The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
4. The proposed adjustment will not unduly burden existing infrastructure.
5. The proposed adjustment will not unduly impair safety in the area.
6. The proposed adjustment will minimize impacts to environmental resources.

(5) Downwind Properties - The establishment of a commercial wind energy facility consistent with the requirements of this ordinance shall not constitute wind access rights that are protected by this ordinance beyond the following setback requirement.

If a wind turbine 200’ in height or taller has been previously placed on a downwind property that is not part of the project, the closest tower on the upwind property shall

be set back a minimum of fifteen rotor diameters from the downwind tower location or any lesser distance agreed to by the downwind and upwind property owners or those authorized to act on their behalf.

2. Solar Energy Facilities:

   a. Ground Leveling – The solar energy facility shall be designed and constructed to minimize ground leveling and to the extent reasonably practicable, limit ground leveling to those areas needed for effective solar energy collection.

   b. Misdirection of Solar Radiation - The solar energy facility shall be designed, constructed, and operated to prevent the misdirection of concentrated solar radiation onto nearby properties, public roadways or other areas accessible to the public, or mitigated accordingly.

   c. Glare - The solar energy facility shall be designed, constructed and operated such that any significant or prolonged glare is directed away from any nearby properties or public roadways, or mitigated accordingly.

   d. Cleaning Chemicals and Solvents - During operation of the solar energy facility, all chemicals or solvents used to clean solar panels or heliostats shall be low in volatile organic compounds and to the extent reasonably practicable, the permit holder shall use recyclable or biodegradable products.

   e. Wildlife - Measures to reduce wildlife impact may include using suitable methods such as coloration or sound producing devices to discourage birds from entering areas of concentrated solar energy near solar-thermal mirrors or other devices that concentrate solar radiation.

3. Cogeneration Facilities:

   a. The cogeneration facility would supply thermal energy to an existing or approved industrial or commercial use.

   b. Except as allowed in this section, an electric transmission line or natural gas or petroleum pipeline necessary for the cogeneration facility must be an upgrade to an existing transmission line or pipeline or must otherwise be constructed in an existing right-of-way or utility easement. If the proposed electric transmission line or natural gas or petroleum product pipeline necessary for the proposed cogeneration project is not an upgrade to an existing transmission line or pipeline, the transmission line or pipeline must comply with the standards in subsection 4 or 5 below.

4. Electrical Transmission Facilities:

   a. Use of Existing Routes/Co-Locating - The development uses available developed or approved road and utility rights-of-way, easements or transmission facilities that can accommodate the proposed facility. New routes are permitted if more adverse energy, environment, economic, and social consequences would result from using an existing route than development of other rights-of-way or easements.

b. Adjacent to Existing Routes - To the extent practical, any part of the proposed transmission or distribution line outside an existing route would be adjacent to an existing public road or utility right-of way or easement.

c. New Routes - If all or part of the proposed transmission line is outside an existing route or not adjacent to an existing route:

(1) The proposed new route would serve an existing or proposed electric generation project that is not adjacent to an existing right-of-way or easement, or

(2) The proposed new route would result in less adverse energy, environmental, economic and social consequences than would result from using an existing route.

d. Setbacks to dwellings - Unless sited within a public road right-of-way, new electrical transmission lines shall not be constructed closer than 500 feet to an existing dwelling without prior written approval of the owner. Said written approval shall be made part of the deed records to that property.

5. Natural Gas or Petroleum Product Pipelines:

a. Use of Existing Routes - To the extent practical, the proposed pipeline would use developed or approved road and utility rights-of way or easements that can safely accommodate the proposed line.

b. Adjacent to Existing Routes - To the extent practical, any part of the proposed pipeline outside an existing route would be adjacent to an existing public road or utility right-of-way or easement.

c. New Routes - If all of part of the proposed pipeline is outside an existing route or not adjacent to an existing route:

(1) The proposed new route would serve an existing or proposed electric generation project that is not adjacent to an existing right-of-way or easement, or

(2) The proposed new route would result in less adverse energy, environmental, economic and social consequences than would result from using an existing route.

d. Stream crossings: If the proposed pipeline would cross a stream or river that is important habitat for a state or federally-listed threatened or endangered species, the permit holder must use a crossing technique or method approved by the Oregon Department of Fish and Wildlife.

Wasco County Board of Commissioners
Staff Report
PLALEG-09-06-0003

Amendments to the
Wasco County Land Use & Development Ordinance

Note: This staff report has been written to address ONLY the amendments to the Wasco County Land Use and Development Ordinance, NOT the amendments to the Wasco County Comprehensive Plan. The amendments to the comprehensive plan were adopted by the Board of Commissioners on January 4, 2012. The staff report and attachment was prepared for the March 20th public hearing and addresses issues raised at the February 15, 2012 public hearing.

More information available at: http://co.wasco.or.us/planning/Energy_updates_Main.html

Date:	Prepared for March 20, 2012 Public Hearing (Continued from February 15, 2012)
Request:	Amend the Wasco County Land Use and Development Ordinance (LUDO) 1. Amend language related to where and how commercial and non-commercial energy development is allowed. 2. Modernize language that is not compliant with state law, incorrect, or out of date. 3. Reformat all zones and add similar uses to create as much consistency between the zones as possible.
Prepared by:	John Roberts, Planning Director Jeanette Montour, Senior Planner
Prepared for:	Wasco County Board of Commissioners
Applicant:	Wasco County Planning Department
Planning Commission Hearing Dates:	May 3, 2011 and June 7, 2011
PC Recommendations:	LUDO: On a vote of 7 – 0 the planning commission recommended the Board of Commissioners adopt the proposed amendments as presented at the 7 June 2011 hearing and further amended during deliberation.
Applicable Properties:	All properties in Wasco County outside of the National Scenic Area and outside of urban growth areas.
Procedure Type:	Legislative

Attachments: Attachment A: Additional Suggested Changes to the Wasco County Land Use and Development Ordinance, Chapters 1, 3 & 19 (Focused on Chapter 19 – Standards for Energy Facilities)

I. OPEN HOUSE – March 20th

An Open House has been noticed and will be hosted on March 20th from 8:00 a.m. to 9: a.m. (just before the scheduled 9:00 a.m. hearing) on the third floor of the Court House. The Open House was organized in response to public comments and feedback received and recognizing the need to be available to the public. At the Open House all planning staff will be onsite and available to:

- Explain how the proposed setback regulations would affect properties in each zoning district differently (i.e., differences between non-resource and resource lands).
- Illustrate proposed setbacks with maps and visuals.
- Provide explanations and answers to all related issues and concerns.

II. ADDITIONAL CHANGES PROPOSED TO CHAPTERS 1, 3 & 19

The first Board of Commissioner public hearing on the proposed amendments to the Wasco County Land Use and Development Ordinance (LUDO) was held at the Northern Wasco PUD on February 15, 2012. The amendments focus on Chapter 19 (Energy Facilities & Related Uses). The hearing was well attended and many comments were solicited through both written and public testimony.

The following breaks down additional changes proposed by staff to the draft LUDO amendments and are primarily in response to comments received before or at the February 15th public hearing. The comments are categorized as either non-substantive or substantive. These changes are identified through Track Changes: ~~strikethrough~~ and underline in Attachment A.

Examples of "Non-Substantive" Changes Made to Chapters 1 and 19:

- Headers pertaining to four definitions.
- Capitalization and reformatting of tables where necessary or appropriate.
- Elimination of the word "ministerial" throughout and replaced with "Type I."
- Basic or common sense provisions related to color, visibility or odor were modified.
- Headers and language to explicitly clarify review process and review authority were inserted.
- Reorganizing provisions to make them flow better (e.g., section on County Decision Options: Tentative and Final Approval).
- Sentences eliminated to reduce redundancy.
- Specifics eliminated to allow for more flexibility (e.g., section on Decommissioning Plan).

It is felt it is not necessary to provide details on these changes as they were intended to provide additional clarity and did not change the intent of any specific provisions.

Substantive Changes Made to Chapter 3 and 19:

Chapter 3

The following changes were made to Section 3.210(D)(12) – EFU Zone:

- EFU Zone – Section 3.210(D)(12): Utility facilities "necessary" for public service, including wetland waste treatment systems and Electrical Transmission Facilities under 200 feet in height, but not including commercial utility facilities for the purpose of generating electrical power for public use by sale, or Electrical Transmission Facilities ~~transmission towers~~ over 200 feet in height, subject to Section J(8), Additional Standards below ~~and the applicable provisions of Chapter 20, Site Plan Review~~.

  ~~A Transmission Facility under 200 feet in height subject to J(8)(a)(1) – (6) below and the applicable Subject to Standards criteria of Chapter 19.~~

  Staff Comment: Electrical Transmission is divided into three categories: (1) Distribution/Utility Facility Service Lines under 200' in height which are allowed without review; (2) Related and accessory transmission which are allowed accessory to a new energy generation facility if owned by the developer and are not a separate use; and (3) New transmission facilities. ORS 215.283 only allows Electrical Transmission Facilities over 200' to be reviewed as a CUP. So, while other zones require all Electrical Transmission Facilities to be reviewed as a CUP, this zone must be consistent with ORS.

Chapter 19

- Section 19.020.B(2)C(2) - Lighting ~~the top of the tower~~ - Lighting of towers is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall seek approval of radar triggered lighting~~and radar triggered lighting is on the list of approved lighting, it shall required~~.

  Staff Comment: There were multiple concerns about lighting at night submitted. The current proposal required radar triggered lighting if it is allowed by the FAA. The suggested changes allows more flexibility in requiring radar triggered lighting or not based on specific circumstances. These changes are also applicable to Section 19.030(D)(1)(A)(3) – Visual Impact.

- Section 19.030.A.1.C.1 - EFSC:
  (1) EFSC has regulatory authority over all energy facilities designated by ORS 469.300. However, pursuant to ORS 469.480 EFSC shall designate the BOCC as a Special Advisory Group which may participate in the siting process pursuant to the role established in ORS 469 and OAR 345 which includes recommending substantive criteria applicable to the proposed energy facility. ~~Prior to submitting recommended applicable substantive criteria to EFSC the BOCC shall provide newspaper notification to citizens of Wasco County about the meeting where they will take action to establish the applicable substantive criteria. At this meeting the BOCC will take public testimony on~~

~~the applicable substantive criteria. Recommendations of the Planning Department to the BOCC will be available to the public 7 days prior to the BOCC hearing~~.

Staff Comment: Staff believes this provision as originally proposed is a good idea. However, it is felt that in light of very tight or short timelines established in the EFSC (Energy Facilities Siting Council) process (i.e., typically 30 days) it would be difficult to make such referrals from the Board of Commissioners through the above described referral process a reality. Moreover, there is ample opportunity for the public to comment directly to EFSC as part of the referral process. In short, going through the recommended Board referral process could take a long time and such provision could open up the county to challenges. The suggested changes would align the provision with the realities of the EFSC siting process.

- Section 19.030.C.4. – Visual Impact

a. Scenic Resources – To issue a conditional use permit for an energy facility, the county must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources or values identified as significant or important in the Wasco County Comprehensive Plan.

~~a.~~b. Protected Areas: Except as provided in subsections (b) and (c) below, an energy facility shall not be located in the areas listed below~~following areas~~:

~~i. Areas identified as significant or important visual resources in the Comprehensive Plan;~~

(1) National recreation and scenic areas, including but not limited to the Columbia River Gorge National Scenic Area;

(2) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(3) State parks and waysides as listed by the Oregon Department of Parks and Recreation;

(4) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(5) National and state fish hatcheries or national and state wildlife refuges;

(6) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(7) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782; and

~~(8) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas.~~

~~b.~~ 1. Exceptions to Protected Areas - Except where the following uses are regulated by federal, state or local laws, including but not limited to the Columbia River Gorge National Scenic Area Act and implement land use ordinances, t~~T~~he following may be approve in a protected area identified in subsection (b~~a~~) above if other alternative routes or sites have been studied and been determined to have greater impacts

~~(9)~~(8) An electrical transmission line;

~~(10)~~(9) A natural gas pipeline; or

~~(11)~~(10) An energy facility located outside a protected area that includes an electrical transmission line or natural gas or water pipeline as a related or supporting facility located within a protected area.

~~c.~~ 2. Transmission Line & Pipeline Exception - The provisions of subsection (b~~a~~) above do not apply to electrical transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line or one natural gas pipeline.

~~b.~~c. Additional Visual Mitigation Impacts for all Facilities - The design, construction and operation of the energy facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified in subsection (a) above. Methods to mitigate adverse visual impacts could include but are not limited to:

(1) Building the energy facility near the edge of contiguous timber areas or using the natural topography to obscure the energy facility;

(2) Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation; and

(3) Retaining or planting vegetation to obscure views of the energy facility.

Staff Comment: Based on public comments this section was reorganized to try and provide more clarity. For example, the comprehensive plan language is proposed to be removed as it could create duplication and confusion with Goal 5 in the County's Comprehensive Plan. It is felt the four headers should create more distinction between scenic resources, protected areas and what exceptions pertain to protected areas.

- Section 19.030.C(9) – Transportation Plan

Staff Comment: This section is proposed to be amended to stress that a transportation plan shall be developed and implemented in consultation with the Wasco County Road Department and/or the Oregon Department of Transportation. In this context two specific provisions amended or added include:

(c) Restoring the natural grade and revegetating all temporary road cuts, used during construction of the energy facility. The applicant shall specify the type and amount of

native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

(d) A Road Impact Assessment/Geotechnical Report for roads to be used by the project. Said report should include an analysis of project-related traffic routes to be used during phases of construction, project operation and decommissioning. The report and any subsequent amendments shall be used as a discipline study and shall be incorporated into the Road Use Agreement between the Applicant and the County.

- 19.030(D)(1)(c) - Setbacks

Staff Comment: The issue of setbacks received a lot of attention at previous Board of Commissioner and planning commission public hearings. A provision was included in the original draft regulations to allow a "waiver" to the proposed 2/3 mile setback for dwellings in agriculture and forest lands. For example, a property owner could provide permission for a turbine to be sited closer than 2/3 of a mile and possibly within a ¼ mile of their dwelling if a waiver was signed by them the property owner.

The waiver provision has been deemed unconstitutional by the Oregon Land Use Board of Appeals (LUBA). However, it is felt the need for waivers as it relates to setbacks is very important to provide flexibility to landowners and applicants. Thus, in light of the LUBA decision an approach similar to a waiver provision has been proffered.

This approach is called an "adjustment" and addresses the issues raised in the recent LUBA case (i.e., Cosner vs. Umatilla County). The adjustment process avoids legalities as it is a factors based determination in process, safety, resource management and preservation.

The proposed "adjustment process" could be applied to: shadow flicker, non-project boundaries, and setbacks for cities/urban growth boundaries, non-resource zone lands (i.e., rural residential properties) and resource zoned lands (i.e., agricultural and farm lands). It is proposed to incorporate the adjustment provision into all the aforementioned, except "non-resource" zoned properties. The reason for this is because a waiver provision was not originally proposed for non-resource zoned properties, which has a proposed setback of 1 mile.

The following is the proposed language to address "adjustments" (i.e., akin to a waiver process) to dwellings located in agricultural and forest lands:

An applicant may request an adjustment to the resource dwelling setback described above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A). As part of the permitting process the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:

(a) The property owner's support or consent of a lesser setback.
(b) Applicant's ability to comply with DEQ noise regulations.
(c) Site specific conditions of the site.
(d) Avoiding or minimizing potential environmental or resource impacts.

Staff Comment: Note, wind turbines would still be required to meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

Other Comments Received But Not Incorporated:

The following identifies specific sections of Chapter 19 that have been identified by the public, through the public commenting process, as areas in need of substantive change. The suggested changes as it relates to these sections were not incorporated into Attachment A by staff. Proposed changes to these sections could be brought to the Board's attention at the public hearing. Staff is willing to expand on any of these sections and respective comments or issues at the public hearing and explain why suggested changes offered by the public were not incorporated.

- 19.010 – Purpose
- 19.030(A)(1)(c) – Tentative Approval and Final Approval
- 19.030(C)(5) – Natural Resource/Wildlife Protection
- 19.030(C)(6) – Cultural Resources
- 19.030(C)(11) – Onsite Access Roads and Staging Areas
- 19.030(C)(12) – Dust Control

III. OPTIONS & RECOMMENDATIONS

The Board of Commissioners have three options on how to proceed. In deciding how to move forward the following are factors to weigh, balance and consider:

- Public comments and feedback from the March 20th public hearing.
- Need for additional public testimony.
- Comfort level with the proposed regulations.
- Desire for more research or details on specific issues.
- Need to explore more options.
- Recent adoption of the Wasco County Comprehensive Plan on January 4, 2012.

The three options to consider are as follows:

1) Continue Public Hearing: If the Board of Commissioners need more time to take more public comment, address issues or explore options, Planning Case PLALEG 09-06-0003 should be continued to a date, place and time certain for additional information necessary to make a decision (and if necessary, direct staff to provide additional information). This would also involve leaving the public hearing open. It would be suggested to schedule the continuance within two to three weeks.

2) Adopt Proposed Regulations: If the Board of Commissioners are ready to adopt the proposed regulations, the Board can approve the proposed amendments to Chapters 1, 2, 3, 4, 15 and 19 of the Wasco County LUDO as: recommended by the planning commission; in light of the applicable criteria and findings presented in the staff report to the Board dated February 15, 2012; with additional amendments generated from public comment and from staff as presented; as well as any additional amendments made by the Board (Note: additional amendments made by the Board must be specifically worded). With this approval

the Board shall also grant staff the authority to make non-substantive changes throughout the documents to ensure consistency.

It is recommended such an adoption would be similar to the updates to the Wasco County Comprehensive Plan adopted on January 4, 2012. After adoption staff would prepare a final order (i.e., resolution) with all applicable changes to all chapters clearly identified in an accompanying document. It would be the goal to tie this final order together with the updates to the Wasco County Comprehensive Plan. This could realistically happen in April.

3. Deny the amendments as proposed

Comments received after the March 20, 2012 Chapter 19 Energy Hearing.

March 26, 2012

Dear Wasco County Commissioners,

As part of my testimony at the hearing on March 20th I referred to the inaccurate noise measurements submitted as part of UPC's Cascade Wind Project application. One example of this was that ambient noise measurements were taken when the wind was blowing 18 mph while the state limit is 10 mph. A speaker after me refuted my testimony, saying that there was no such requirement.

In support of my statement I have enclosed an excerpt from DEQ's *Sound Measurement Procedures Manual*. On page 7, Section 4.5.2, a., Weather Conditions: it states "Measurements shall not be taken when the wind speed exceeds 10 mph."

By signing a noise easement agreement, the user gives up the right to complain about the project. As an example, in a noise easement agreement used in Sherman County it states that present and future noise influences might be annoying to users of the property, noise influences might change over time, changes in wind project operations could result in increased noise influences, and that the user's perception of the noise exposure could change and that the user's sensitivity to noise could increase. The grantor releases any right, claim, or cause of action as a result. The result of signing this type of agreement is a de facto gag order.

I would support Iberdrola's request for exempting participating landowners from the setback requirements in exchange for imposing larger setbacks for non-participating landowners. The setbacks should be the same for all zones so that all non-participating citizens receive equal protection. Participating landowners should only be those who have consented to participate in the project. The term "Energy Facility Project Area" should be defined as including only those properties whose owners have consented to participate in the project.

Thank you for this opportunity to comment.

Sincerely,

Sheila Dooley

Sheila Dooley

816 E. 13th St.

The Dalles, Oregon 97058

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUND MEASUREMENT PROCEDURES MANUAL

NPCS-1

Instrument Calibration and Battery Check

4.4.1 Refer to Chapter 3 of NPCS-1 for instructions.

Noise Level Measurements

4.5.1 Comment: That information and data submitted to the Department should be recorded on Forms NPCS-4 and NPCS-5 as shown in Figure 4-3 and Figure 4-5, or on forms approved in writing by the Department.

4.5.2 Weather Conditions

a. The wind speed and direction shall be determined before measurements are taken and recorded on a form. Measurements shall not be taken when the wind speed exceeds 10 mph. The sound level meter windscreen shall always be installed on the microphone while taking measurements.

b. The relative humidity may be determined for the time measurements are taken. Measurements shall not be taken when precipitation affects results.

Comment: Measurements may be taken when the ground is wet if the readings are not influenced by motor vehicle tire noise on wet pavement.

c. Comment: The barometric pressure has an effect on the calibration level of most calibrators. This effect is usually small but can introduce some error under very low atmospheric pressure conditions or at high elevations. Typically no correction is needed at elevations below 2,000 feet. Above 2,000 feet elevation, the manufacturers correction factor must be applied to the instrument during calibration.

4.5.3 Determination of Meter Speed

a. Comment: The "FAST" meter speed is used for sounds of an essentially continuous nature. This speed is such that the indication instrument attains its final reading in approximately 0.2 seconds. In general, the "FAST" meter is used where meter fluctuations do not exceed 3 dB, or where the meter is required to follow fast changes in level such as an automobile or aircraft pass-by measurements.

Comments submitted at the March 20, 2012
Chapter 19 Energy Hearing.

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March 19, 2012

VIA E-MAIL AND U.S. MAIL

Board of Commissioners
Wasco County
511 Washington Street, Suite 302
The Dalles, OR 97058

Re: Comments on Proposed Code Amendment

Dear Commissioners:

On behalf of Iberdrola Renewables, we offer the following comments on the recommendations outlined in the staff report prepared for the Board's March 20, 2012 continued hearing on the proposed amendments to the Wasco County Land Use Development Ordinance ("LUDO"). We strongly encourage the Board to adopt the recommendations contained in the staff report, with a few modifications or clarifications for the record.

LUDO 19.030(B)(3), Non-Resource Zone Standards for Related or Supporting Facilities

The recommended revision moves one of the factors in the reasonable alternatives analysis. While the specific language remains the same, it should be made clear in the record for interpretation purposes that the intent of the language is to require a comparison with existing or allowed uses in the non-resource zone, whether or not such uses may be allowed outright or subject to some level of review.

Recommended Action: Clarify in the record how this analysis should be interpreted and applied.

LUDO 19.030(C)(5), Natural Resource/Wildlife Protection

While the added language of "as appropriate" goes to our earlier comments, we still believe it is important to recognize that the County may lack the expertise to make monitoring and mitigation determinations. From a practical perspective, we encourage the County to hire a consultant to assist in these permitting processes (even if it means increased local permit fees). From a legal

perspective, we encourage the County to adopt the language we previously presented in our February 6 submittal.

Recommended Action: Adopt the following revision (italics identify new language): "As appropriate, the permit holder *may be required to develop in consultation with Wasco County and any jurisdictional wildlife agency, a wildlife monitoring and habitat mitigation plan.*"

LUDO 19.030(C)(6), Protection of Historic and Cultural Resources

The recommended revision specifies that the cultural resources subject to this standard are those included in the Wasco County Comprehensive Plan. We would suggest that the standard instead apply to cultural resources "*potentially eligible for listing on the National Historic Register.*" This language is consistent with the requirements of the Oregon State Historic Preservation Office and state energy facility siting standards. Also, it provides for potentially greater protection of such resources in the County.

Recommended Action: Replace "*included in the Wasco County Comprehensive Plan*" with "*potentially eligible for listing on the National Historic Register.*"

LUDO 19.030(C)(19), Termination and Decommissioning

The recommended revision in LUDO 19.030(C)(19)(a) requires an applicant to submit a decommissioning plan as a part of the approval process. While the County could require through a condition of approval that the applicant submit a decommissioning plan prior to construction, requiring a decommissioning plan as a part of the application process is premature.

Recommended Action: Strike the recommended revision in LUDO 19.030(C)(19)(a).

The recommended revisions in LUDO 19.030(C)(19)(b) further describe what should be included in the decommissioning plan and reduce the types of options for providing financial assurance. This language is limiting and provides the applicant with less certainty than the previous language. Accordingly, we recommend the following action. Of course, any form of financial assurance must be acceptable to the County, which is already a requirement of LUDO 19.030(C)(19)(c)(2) below.

Recommended Action: Strike the recommended language "*as a part of the decommissioning plan*" and add back the original language allowing for a "*bond, letter of credit, insurance policy*

or other such form of guarantee." This same language should be incorporated back into LUDO 19.030(C)(19)(c)(2) and (3).

Additionally, the Board should consider taking into account salvage value when determining the amount of the financial assurance. We encourage the Board to consider Klickitat County's model when determining the adequacy of decommissioning plans and financial assurances. A few examples are enclosed for your consideration.

Recommended Action: Add the following language to subsection (b), last sentence: "The cost estimate *and financial assurance can take into account salvage value associated with the project, and can be reviewed* by Wasco County at their discretion (e.g. every 5 years)."

LUDO 19.030(D)(1)(a)(3), Lighting

It appears that the intent of the recommended revision is to ensure that the appropriateness of radar-triggered lighting is evaluated on a case-by-case basis, and is not required in all circumstances. However, the recommended language does not go far enough and is not consistent with the review process required by the FAA.

Recommended Action: Replace the second sentence with "*Applicant shall minimize the amount of lighting to the extent feasible under the law and company safety protocols.*"

Until radar-triggered lighting is included on the FAA's list of approved lighting (applicable to all wind energy facility projects), it is not reasonable to require an applicant to consider an untested and unproven technology.

LUDO 19.030(D)(1)(c)(3), Resource Dwelling Setbacks

Throughout this entire code amendment process, setbacks have been an important topic for all parties. Although the recommended revision to incorporate an adjustment process into LUDO 19.030(D)(1)(c)(3) is progress, additional clarity is needed in the wind energy standards to provide certainty for developers while at the same time ensuring responsible and safe wind energy development, specifically in the subsections governing resource zone dwellings. We think the following Recommended Action addresses participating landowner comments (*i.e.,* south county residents) while also offering protection to nonparticipating landowners.

Recommended Action: Revise LUDO 19.030(D)(1)(c)(3) Resource Zone Dwellings to create a distinction between participating and nonparticipating landowners in the proposed wind energy project as follows (italics represent new language):

(3). Resource Zone Dwellings – Wind turbines shall be setback from all approved resource zone dwellings as follows:

(a) Participating Landowners. For owners of approved resource dwellings who are also landowners in the Energy Facility Project Area, wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction, provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

(b) Nonparticipating Landowners. For owners of approved resource dwellings who are not landowners in the Energy Facility Project Area, wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

The recommended revision to allow for an adjustment to the resource dwelling setback would apply to the setback in either subsection (a) or (b). Iberdrola continues to advocate for the 1,320-foot setback, as that distance is necessary to protect public health and safety. Should the Board conclude that a different setback is necessary, we request that it only apply to nonparticipating landowners.

LUDO 19.030(D)(1)(c)(4), Non-Resource Boundaries

As drafted, there could be some ambiguity about what situations fall within subsection (a) versus (b). We recommend the following clarifications, but have retreated from advocating for lesser distances given the recommended revision to allow for an adjustment.

Recommended Action: Revise LUDO 19.030(D)(1)(c)(4) to clarify what zones fall within subsection (a) versus (b) as follows (italics represent new language):

(a) A minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries (*measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes like rural residential, and not adjacent to an incorporated city).* (The adjustment provision does not apply to non-resource zoned property.)

(b) 3/4 mile (3,960 feet) from the established city limit *or urban growth boundary or urban resource boundary of an incorporated city unless a lesser setback is granted through the adjustment process under this provision.*

It must be clear that subsection (a) cannot impose a 1 mile setback on city limits or lands within a UGB or urban reserve.

Conclusion

Thank you for considering these suggestions and we look forward to discussing further at the March 20 hearing.

Very truly yours,

Elaine R. Albrich

Enclosure

cc: Brian Walsh

KLICKITAT COUNTY
PLANNING DEPARTMENT
228 W. Main St., MS: CH-17, Goldendale, Washington 98620
VOICE: 509 773-5703 or 1 800 765-7239
FAX: 509 773-6206

August 4, 2010

Brian Walsh
Business Developer
Iberdrola Renewables, Inc
Wind Development - West
1125 NW Couch, Suite 700
Portland, OR 97209

Re: Decommissioning Plan
Juniper Canyon Wind Energy Project (Phase I)

Dear Mr. Walsh,

Thank you for submitting the Decommissioning Plan for our review.

The Plan outlines the circumstances under which individual turbines would be removed from the site, methods used to restore areas previously containing turbines and methods for decommissioning the overall project and restoring the overall site. The Plan also requires financial security to ensure proper decommissioning occurs. It is our understanding that the Juniper Canyon Wind Energy Project (Phase I) commit to provide the security outlined in 2.2.8 to secure the project's decommissioning obligations.

Juniper Canyon (Phase I) attached a decommissioning estimate spreadsheet which provides information on scrap and salvage value, to support Decommissioning Plan approval. Please note that the assumptions made therein are not "approved," but will be considered and approved once the final approach to financial security is determined. Inflation must be accounted for, and salvage values will be re-assessed, based upon market conditions.

No later five (5) years after the project commences commercial operations, submittal and County approval of a revised Plan, including the approach to financial security, is required.

Please regard this letter as approval of the Decommissioning Plan as submitted on July 30, 2010, to address Condition 36 of EOZ2008-02.

Sincerely,

Curt Dreyer
Planning Director

KLICKITAT COUNTY
PLANNING DEPARTMENT
228 W. Main St., MS: CH-17, Goldendale, Washington 98620
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September 13, 2010

Brian Walsh
Business Developer
Iberdrola Renewables, Inc
Wind Development - West
1125 NW Couch, Suite 700
Portland, OR 97209

Re: Clarification of Section 2.2.5 of the Juniper Canyon Wind Energy Project (Phase I) Decommissioning Plan

Dear Mr. Walsh,

Pursuant to your request on August 9, this letter serves to clarify the funding schedule of the recently approved Decommissioning Plan for the above referenced project.

Planning Department staff reviewed the earlier drafts and the Model Decommissioning Plan Resolution 04308. Consistent with these documents, the Planning Department agrees to defer the schedule to achieve full funding of decommissioning security to begin in year seven (7). In other words, no later than seven (7) years after the project commences commercial operations, submittal and County approval of a revised Plan, including the approach to financial security, is required.

The following paragraph shall replace Section 2.2.5 of the approved plan. All other provisions as approved on August 4, 2010 remain unchanged.

> 2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* A schedule for building up the Decommissioning Security over time, which accounts for inflation, so that full funding is achieved by the Security Funding Date will be finalized and approved by the Planning Department before the ~~fifth~~ seventh anniversary of the project's commercial operation date. Developer shall begin funding the Decommissioning Security no later than the ~~fifth~~ seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date. The attached decommissioning cost estimates shall be updated and approved by the Department before the ~~fifth~~ seventh anniversary of the project's commercial operation date.

Sincerely,

Curt Dreyer
Planning Director

JUNIPER CANYON WIND PROJECT (Phase I)
DECOMMISSIONING PLAN

This Decommissioning Plan for the Juniper Canyon Wind Project, owned and operated by Juniper Canyon Wind Power LLC ("Developer") is required by EOZ2008-02. All decommissioning and restoration activities will be conducted in accordance with this Decommissioning Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity. Within eighteen (18) months or other reasonable time period as may be determined by the Planning Department of the termination or abandonment of the Juniper Canyon Wind Project by Developer, Developer shall be required to complete Juniper Canyon Wind Project decommissioning in accordance with this Decommissioning Plan.

1. **Decommissioning Timing.** CUP 2004-11 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.

1.1 *Useful Life of the Facility and Events Triggering Decommission.* The Facility is assumed to have a useful life of 30 years. The leases with the participating landowners are for 30 operational years with possible options for additional lease periods beyond the initial 30 operational years. The Facility could be terminated under the following circumstances:

- At the end of the lease terms or extended terms, or upon termination of the lease(s)/Facility by Developer, at Developer's sole discretion.
- At the end of commercial operation of the Facility.
- In the event of a material breach of lease terms by Developer for all participating landowners which is not cured within the prescribed time period.
- As a result of unknown or unpredictable events, such as governmental condemnation, or natural disasters.

If the Facility is terminated, Developer will obtain the necessary authorization to proceed with the Facility decommissioning consistent with this Plan.

1.2 *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:

- Failure of a turbine or its related equipment where repair or replacement is impractical.
- The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
- Economic impracticability or removal of turbines at Developer's sole discretion.

If the individual turbines are terminated, Developer will obtain the necessary authorization to proceed with turbine decommissioning consistent with this Plan.

2. **Decommissioning Scope.** The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.

2.1 *Method of Decommissioning the Project and Restoring the Project Site.* The method of decommissioning the turbines has five parts:

- Mobilize cranes to the site for each wind turbine; dismantling of turbines, towers, and other above-ground equipment, make commercially reasonable efforts to perform an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;
- Removal of below-ground foundations and components as required under the terms of the leases;
- Protect roads within the County from damages which arise from decommissioning activities beyond usual wear and tear;
- Soil and vegetation reclamation to restore the soil surface to a condition reasonably similar to its original condition; and
- Removal of Facility roads unless property owners desire to keep such roads.

2.1.1 *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment and make reasonable commercial efforts to reuse or salvage materials as may be determined by Developer.

2.1.2 *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pads used for the individual turbine transformers will also be removed. This will allow use of the property after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3 *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. Developer is responsible for all damage to roads, beyond usual wear and tear. Developer may be required to enter into a road haul agreement with the County's Department of Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4 *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area is

to be reclaimed and will include re-grading to restore soil and original contours and re-vegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

2.1.5 *Removal of Facility Roads.* One of the final steps in decommissioning will be removal of Facility roads. Decommissioned roads will be reclaimed to restore the surface grade and soil to a condition useful for either agriculture or wildlife habitat, depending on the use of surrounding lands. Roads also may be left in place based on landowner preference. It is expected that landowners generally will not want the Project to decommission the widened portions of farm roads that pre-existed the Facility, but may want the new access roads built for the Facility decommissioned.

2.1.6 *Method of Decommissioning Individual Turbines and Restoring the Area Containing Decommissioned Turbines.* The first step in the individual turbine decommissioning activities would be to dismantle the turbine, the support tower, and the pad mounted transformer and make reasonable commercial efforts to reuse or salvage materials as may be determined by Developer. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine may need to remain in place to access the remaining wind turbines for operational and maintenance related activities.

2.2 *Decommissioning Funding and Security Arrangement.*

2.2.1 *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, Developer shall provide financial security ("Decommissioning Security") as set forth below. Following County approval of decommissioning completion consistent with the Plan, the Developer may reduce, return or eliminate the Decommissioning Security. For purposes of the Plan, "completion" means the Planning Director has reasonably determined that decommissioning has been performed in accordance with the Plan, permit, and code requirements.

2.2.2 *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3 *Forms of Decommissioning Security.* The Developer shall provide Decommissioning Security as set forth in 2.2.8 below.

2.2.4 *Deadline for Funding Decommissioning Security.* If a bond, letter of credit, or deposit account is used the Project shall achieve the requisite level of Decommissioning Security funding by a date certain. That date, referred to as the "Security Funding Date," is 20 years from the Project's first day of commercial operation.

2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* A schedule for building up the Decommissioning Security over time, which accounts for inflation, so that full funding is achieved by the Security Funding Date will be finalized and approved by the Planning Department before the fifth anniversary of the project's commercial operation date. Developer shall begin funding the Decommissioning Security no later than the fifth anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date. The attached decommissioning cost estimates shall be updated and approved by the Department before the fifth anniversary of the project's commercial operation date.

2.2.6 *Extensions of Security Funding Date.* During project operation, Developer may request an extension of the Security Funding Date. The Planning Director may approve an extension if the Developer demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date.

2.2.7 *Credit for Value of Equipment.* To provide the required Decommissioning Security, should the Project use a deposit account, guaranty from an investment rated company, performance bond, or letter of credit the Project may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, performance bond, or letter of credit. This credit shall not be in an amount in excess of thirty-five percent (35%) of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.

- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap at the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the Developer to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value. An updated scrap value estimate shall be provided and approved by the Planning Department before the fifth anniversary of the project's commercial operation date.

2.2.8 *Recognized Forms of Financial Security.* Security shall be provided by the Developer no later than the fifth anniversary of the Project's commercial operation date. Financial security may include each of the following, or a combination thereof, as the County may determine, and shall be substantially consistent with the County's model decommissioning plan, except that Developer may request a "parent company guaranty" as provided below:

- Deposit or Trust Account. The Developer has not proposed a deposit or trust account, but may request County approval of this approach in future.
- Performance Bond. The Developer has not proposed a performance bond, but may request County approval of this approach in future.
- Letter of Credit. The Developer has not proposed a letter of credit, but may request County approval of this approach in future.
- Guaranty. At the request of Developer, the County may consider, as one or more of the forms of financial security, a secured guaranty from an independent third party. Also, the developer has requested County approval of a guaranty from its parent company. Upon review of audited financial statements prepared by nationally-recognized, independent auditors selected by the County, and at Developer's sole cost and expense, the County may consider for acceptance a secured guaranty from Iberdrola Renewables Holdings, Inc., or an affiliate of Developer. If accepted, the County may elect to limit this form of security to a limited portion of total decommissioning costs (i.e., 15% for every $100,000,000 of equity in the company).

  Any guarantor must demonstrate to the County's satisfaction such guarantor's current and continuing financial viability throughout the decommissioning period by demonstrating a Credit Rating of (a) BBB- or better from Standard and Poor's; or (b) Baa3 or better from Moodys; or (c) having audited financial statements prepared by a nationally-recognized firm of independent auditors indicating a net worth in excess of $100,000,000. If the "parent-company" guarantor approach is used (as addressed in the preceding paragraph), guarantor shall demonstrate continuing financial viability consistent with the preceding paragraph (i.e. maintenance of $100,000,000 equity for each 15% of decommissioning costs).

  The Developer shall provide the County with copies of its most recent financial statements upon request, and Iberdrola Renewables Holdings, Inc. or an affiliate of the Developer will notify the County if at any time during the Decommissioning Period that its financial standing falls below the Credit Ratings/identified equity minimums listed above. If this shall occur, the County shall have the ability to require the Developer to provide any of the other approved forms of security outlined in this

agreement for the outstanding amount of security within 60 days of notice from the County.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require Developer to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.

4. **Plan Update.** The County and Developer may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years, to reflect changing circumstances. The County may review and amend the Plan without the Developer's agreement, and outside of this five year period, if:

- There are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit (i.e., salvage value); or
- There is a significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
- There are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

Plan revisions made outside of the five year cycle require a minimum of 45 days mailed notice to Developer before being finalized and approved. Such revisions shall not be made without consulting with Developer, and reviewing any written comment submitted. In making the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties Developer would face in complying with the Plan revisions.

5. **Conclusion.** Based on the foregoing information, Developer is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

Juniper Canyon - DECOMMISSIONING ESTIMATE (based on EFSC independent engineer methodology)
Date: 09/17/09
Author: Tervo

Description	Quantity	Unit	Unit Cost	Extension
Turbines				
Disconnect electrical and ready for disassembly	63	WTG	$ 1,009.00	$ 63,567
Remove turbine hubs and blades	63	WTG	$ 3,949.00	$ 248,787
Remove turbine nacelles and towers	13860	TN	$ 72.81	$ 1,009,147
Remove and load pad-mounted transformers	63	WTG	$ 2,319.00	$ 146,097
Remove tower foundations	1890	CY	$ 36.23	$ 68,475
Restore turbine turnouts	63	WTG	$ 98.00	$ 6,174
Met Towers				
Dismantle and dispose of met towers	2	EA	$ 8,329.00	$ 16,658
Substations and Field Workshops				
Dismantle and dispose of substations	1	EA	$ 62,098.00	$ 62,098
Dismantle and dispose of O&M facility	1	EA	$ 28,387.00	$ 28,387
Transmission Line				
Remove 230-kV single-circuit transmission line	19.5	MILE	$ 65,900.00	$ 1,285,050
Remove 230-kV double-circuit transmission line	0	MILE	$ 66,420.00	$ -
Remove 34.5-kV single-circuit transmission line	1.5	MILE	$ 5,613.00	$ 8,420
Remove understrung 34.5-kV single-circuit transmission line	0	MILE	$ 817.00	$ -
Remove understrung 34.5-kV double-circuit transmission	0	MILE	$ 1,430.00	$ -
Remove junction boxes & electrical to 4' below grade	4	EA	$ 1,362.00	$ 5,448
Access Roads				
Remove roads, grade and seed	18	MILE	$ 18,895.00	$ 340,110
Restore Additional Areas Disturbed by Facility Removal				
Around turbine pads and turnouts	5	AC	$ 5,760.00	$ 28,800
Turbine disassembly crane and truck areas	5	AC	$ 5,760.00	$ 28,800
Turbine disassembly laydown area	5	AC	$ 2,861.00	$ 14,305
Around met towers	1	AC	$ 5,760.00	$ 5,760
Around substations	3	AC	$ 5,760.00	$ 17,280
Around O&M facility	2	AC	$ 5,760.00	$ 11,520
Around 34.5-kV power line poles	1	AC	$ 2,861.00	$ 2,861
Around 230-kV power line supports	8	AC	$ 2,861.00	$ 22,888
Around access roads	22	AC	$ 5,760.00	$ 126,720
General Costs				
Permits, mobilization, engineering, overhead, utility disconnects	1	LS	$350,000.00	$ 350,000
Subtotal				$ 3,897,351
Performance Bond	1%			$ 38,974
Gross Cost				$ 3,936,324
Administration and Project Management	10%			$ 393,632
Future Developments Contingency	10%			$ 393,632
Total Site Restoration Cost			**Total site restoration with no salvage**	$ 4,723,589
			Average cost per turbine with no salvage	$ 74,978
Salvage Costs				
Steel scrap value (turbines only)	13860	TN	$ (245.00)	$ (3,395,700)
Copper scrap value	1200	TN	$ (3,860.00)	$ (4,632,000)
Oil salvage value	10000	Gal	$ (1.60)	$ (16,000)
			Net salvage value	$ (8,043,700)
			Net cost / (Revenue) from removing wind plant	$ (3,320,111)

Albrich, Elaine

From: Albrich, Elaine
Sent: Monday, March 19, 2012 4:30 PM
To: 'John Roberts'
Cc: RodR@co.wasco.or.us; ScottH@co.wasco.or.us; SherryH@co.wasco.or.us; Walsh, Brian
Subject: Submittal into LUDO Code Amendment Record
Attachments: Juniper Canyon FINAL Decom. Plan.PDF; Decommissioning Plan - Harvest Wind.pdf; Decommissioning Plan - Linden Ranch.pdf; Decommissioning Plan - Miller Ranch.pdf; Decommissioning Plan - Windy Point II.pdf

John,

Please find attached examples of decommissioning plans for inclusion in the Wasco County LUDO Code Amendment Record. I reference these documents in my March 19th comment letter. The Juniper Canyon example is included as an attachment to my letter, which I'll forward separately.

Thanks, Elaine

Elaine R. Albrich
STOEL RIVES LLP | 900 SW Fifth Ave, Suite 2600 | Portland, OR 97204-1268
Direct: (503) 294-9394 | Mobile: (503) 250-4429 | Fax: (503) 220-2480
eralbrich@stoel.com | www.stoel.com

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HARVEST WIND ENERGY PROJECT
DECOMMISSIONING PLAN

May 26, 2009

This Decommissioning Plan for the Harvest Wind Energy Project is required by the Harvest Wind EOZ Permit Condition 33. All decommissioning and restoration activities will be conducted in accordance with this Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity.

1. **Decommissioning Timing.** Permit Condition 33 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.

1.1 *Useful Life of the Facility and Events Triggering Decommission.* The Facility is assumed to have a useful life of 30 years. The trend in the wind energy industry has been to "repower" older projects by upgrading existing towers and project infrastructure with more efficient turbines and related equipment. This would extend the useful life to a period far longer than 30 years. The leases with the landowners are for at least 30 years with possible options for additional lease periods. The Facility could be terminated under the following circumstances:

- At the end of the lease terms or extended terms.
- At the end of commercial operation of the Facility.
- In the unlikely event of a material breach of lease terms.
- As a result of unknown or unpredictable events, such as governmental condemnation, or natural disasters.

If the Facility is terminated, the permit holder will obtain the necessary authorization to proceed with the Facility decommissioning.

1.2 *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:

- Failure of a turbine or its related equipment where repair or replacement is impractical.
- The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
- Economic impracticability.

If the individual turbines are terminated, the permit holder will obtain the necessary authorization to proceed with turbine decommissioning

2. **Decommissioning Scope.** The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.

2.1 *Method of Decommissioning the Project and Restoring the Project Site.* The method of decommissioning the turbines has five parts:

- Dismantling of turbines, towers, and other above-ground equipment, performing an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;
- Removal of below-ground foundations and components as required in the leases;
- Protect roads within the County from damages beyond usual wear and tear;
- Soil and vegetation reclamation; and
- Removal of Facility roads.

2.1.1 *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment. The tower, equipment in the nacelles, and transformers are expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material will be disposed of at authorized sites.

2.1.2 *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pad used for the transformer will also be removed. This will allow agricultural use of the Facility site after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. In addition, underground cable removal is expected to be more environmentally disturbing than leaving cables in place. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3 *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. The permit holder is responsible for all damage to roads, beyond usual wear and tear. The permit holder shall enter into a road haul agreement with County Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4 *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area is to be reclaimed and will include re-grading to restore soil and original contours and re-vegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

2.1.5 *Removal of Facility roads.* One of the final steps in decommissioning will be removal of Facility roads. Decommissioned roads will be reclaimed to restore the

surface grade and soil to a condition useful for either agriculture or wildlife habitat, depending on the use of surrounding lands. Roads also may be left in place based on landowner preference. It is expected that landowners generally will not want the Project to decommission the widened portions of farm roads that pre-existed the Facility, but may want the new access roads built for the Facility decommissioned.

2.1.6 *Method of Decommissioning Individual Turbines and Restoring the Area Containing Decommissioned Turbines.* The first step in the individual turbine decommissioning activities would be to dismantle the turbine, the support tower, and the pad mounted transformer. The tower, much of the equipment in the nacelle, and the pad-mounted transformer is expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material would be disposed of at authorized sites. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine would need to remain in place to access the remaining wind turbines for operational maintenance activities.

2.2 *Decommissioning Funding and Security Arrangement.*

Note to Applicant: To finalize decommissioning plan details, the applicant must select an approach to providing decommissioning security and work out the details with the County, before the decommissioning plan can be approved. The language below reflects the County's general expectations for Decommissioning Security, and each project's decommissioning plan should be revised to reflect each project's proposed security arrangement.

2.2.1 *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, the permit holder shall provide financial security ("Decommissioning Security") consistent with the policies set forth in this subsection, and determined acceptable by the Planning Director.

2.2.2 *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3 *Forms of Decommissioning Security.* The permit holder shall provide Decommissioning Security through one of the forms recognized in subsection 2.2.8 below, or through another form approved by the Planning Director as substantially equivalent. Permit holders shall specify and obtain approval of the form of Decommissioning Security in the Decommissioning Plan. Of the five recognized forms of Decommissioning Security listed below, two are based on the financial standing of the permit holder itself, namely the corporate guaranty and the utility ownership. Permit holders that qualify for these forms of Decommissioning Security do so by demonstrating their overall financial stability. The other three, deposit accounts, bonds and letters of credit, are based on separately-established security mechanisms funded by purchase or cash deposits.

2.2.4 *Deadline for Funding Decommissioning Security.* Any project using a bond, letter of credit, or deposit account shall achieve the requisite level of Decommissioning Security funding no later than a specified date. That date, referred to as the "Security Funding Date," will be identified in the approved plan and will normally be no later than twenty years after the project's commercial operation date. Twenty years is intended to approximate the point when turbines enter the last third of their expected useful lives. It is at that point that separate security becomes appropriate to ensure that project equipment would not be abandoned without full implementation of the Decommissioning Plan.

2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* The Plan shall include a schedule for building up the Decommissioning Security over time so that the full funding is achieved by the Security Funding Date. The permit holder shall begin funding the Decommissioning Security no later than the fifth to seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date.

2.2.6 *Extensions of Security Funding Date.* During project operation, the permit holder may request an extension of the Security Funding Date. The Planning Director may approve an extension if the permit holder demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date. Provision of security earlier than the Security Funding Date is permitted but would not typically be required.

2.2.7 *Credit for Value of Equipment.* To provide the required Decommissioning Security, permit holders using a deposit account, bond or letter of credit may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, bond or letter of credit. This credit shall not be in an amount in excess of 35% of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.

- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap at the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the permit holder to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value

2.2.8 *Recognized Forms of Financial Security. (Any approach proposed by an applicant will require County approval. The County may revise or eliminate these approaches over time.)*

- **Performance Bond.** Permit holder shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The County Planning Department shall approve the required bonding levels. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect until the secured decommissioning obligations are satisfied. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a permit violation and default under the Bond provisions.

- **Letter of Credit.** Permit holder shall provide financial security for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated "A" or better by a Rating Service. The County Planning Department shall approve the dollar amount the letter of credit shall be made out for. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. Klickitat County shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the applicant's failure to perform its decommissioning obligations when due.

- **Guaranty.** The permit holder shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior

unsecured long term debt rating ("Credit Rating") of (a) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB – or better from Standard and Poor's or (b) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000.

- **Deposit or Trust Account.** Permit holder shall create a deposit account for deposit of funds on an annual basis and in an acceptable amount. Alternatively, the permit holder may use a trust account to allow more active management of deposits. If so, the terms of the trust fund shall be subject to approval by the Planning Director and the amounts deposited shall cover the trust's expenses. The conditions of the account and amount of annual deposit shall be approved by the County. Funds shall be available to the County under terms of the deposit or trust account upon failure of permit holder to comply with this plan. Release of the account, or funds within the account, shall be upon approval of the County and permit holder, except as otherwise provided herein.

- **Project Ownership by Public Utility with Rate Collection Authority.** A permit holder that is a legally-recognized public utility with authority to charge rates, and which demonstrates to the Planning Director's satisfaction that its rate base is adequate to fund the Decommissioning Plan, and is in solid financial standing, may be deemed to have funded its Decommissioning Security obligation while it maintains such authority, and while it remains in solid financial standing.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require the permit holder to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.

4. **Harvest Wind Project Decommissioning Financial Security and Schedule.** The Harvest Wind Project commits to use either a deposit account to provide financial security, or to use the utility ownership method. At the time this Plan is submitted, the owners of the project are considering alternative ownership structures going forward. Final decisions as to the structure will be made after this Plan must be submitted to the County. The structures under consideration are: (1) continued ownership by the four utilities that currently own the project as tenants in common; or (2) a sale of the project to a third party with purchase of the project's output by the four utilities and an option for them to purchase the project after approximately five years. Either ownership structure would be consistent with use of the deposit account method of decommissioning financial security. The utility ownership method may be appropriate with either structure as well, but will be reviewed by the County. Thus, the permit

holders would provide financial security through either the deposit/trust account method, or the utility ownership method in accordance with the following schedule.

EOZ Permit Condition 33 contemplates that this Plan include a schedule and funding plan to specify how the security/financial arrangements mechanism will be funded during operations. No later than five years after the project commences commercial operation, the project will submit to the County for review and approval detailed documentation necessary to establish a deposit or trust account in accordance with the terms for such accounts outlined above in section 2.2.8, bullet 4. Promptly following the County's approval of such documents, the project will cause them to be executed and ready the account to receive funds. Beginning in the seventh year after commercial operation, the project will fund the account as necessary to secure the projected decommissioning costs. A project-specific estimate for such costs has been provided by the Applicant, as is specified in Exhibit A. However, the County will review and approve updated estimates within five years, which shall be based upon a 20-year funding period. These updated estimates must also account for inflation during the funding period, and the County may require that salvage be confirmed by an independent third party. However, alternatively, if the project obtains the County's approval to use the "Project Ownership by Public Utility with Rate Collection Authority" mechanism in lieu of the deposit/trust account mechanism, no deposit/trust account mechanism shall be required, and any funds already accumulated in such account (if such approval is granted after funding has begun in year seven) would be returned. This latter approach has not been pre-approved. It is contingent on County approval, based upon factors noted above, the applicant's financial condition, market conditions, and other relevant criteria.

5. **Plan Update.** The County and permit holder may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years, to reflect changing circumstances. The County may review and amend the Plan without the permit holder's agreement, and outside of this five year period, if:

- there are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit; or
- there is a significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
- there are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

Plan revisions made outside of the five year cycle require a minimum of 45 days mailed notice before being finalized. Such revisions shall not be made without consulting with the permit holder, and reviewing any written comment submitted. In making the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties the permit holder would face in complying with the Plan revisions.

6. **Conclusion.** Based on the foregoing information, the applicant is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

Exhibits:

Exhibit A: Decommissioning cost estimates (rev. 4/22/09)
Exhibit B: E. Gjelde correspondence regarding decommissioning cost estimates (4/21/09)
Exhibit C: Two spot quotes for steel and copper scrap value corroborating estimates in Exhibit A (both dated 4/22/09)

SUMMIT
POWER

April 21, 2009

Planning Department
Klickitat County
228 West Main
Goldendale, WA 98620

RE: Harvest Wind Project
Decommissioning Plan Application

Gentlemen:

Regarding the need for supporting the estimated time and material expenses for a projecting costs of decommissioning the Project at the end of its useful life of 30 years – in 2009 dollars:

Please note that the best reasonable effort to accurately represent a time and material estimate of future cost in today's dollars is a process that necessarily contains many inherent unknowns. Equipment available in 30 years will undoubtedly contain improvements and excavation/ reclamation techniques will certainly be different than today. Thus, while as much accuracy as possible is desirable for today's known factors, it must be recognized that any such estimate is subject to a margin of error by such future elements. With these realistic limitations in mind, we prepared our cost model as follows:

1. We used current prevailing wages for various labor, equipment operator and Vehicle driver categories and increased them by 50% as a reasonable estimate of added cost of travel, incentive pay to a remote site and other contractor payroll taxes and overhead associated with employees.

2. We used current machine rental rates by type as supplied by a local contractor to our project site manager. We then matched the type machine to our best estimate of the type of task required for disassembly, removal, reclamation, hauling etc.

SUMMIT POWER

The only machine that a firm price was not available was for the ultra-hi lift crane necessary to remove the blades and nacelle and tower sections to the ground for further disassembly. Wind turbines were (up to this year) in extremely short supply – and this situation is anticipated to be the case in another year or so. Consequently turbine costs are unpredictable and always seem to be higher than projected.

3. We estimated the man hours and equipment hours required to do the task envisioned for the decommissioning elements. Note that no contractor would be expected to give us such an estimate unless we were offering a serious and immediate contract.

4. For the assigning of construction machine types to tasks, for the estimating of man and machine hours needed, we relied primarily on the experience and knowledge of myself – a reasonable approach considering the following:

   a. I am a graduate civil engineer and held a professional license in Oregon for many years.

   b. I worked for five years at Caterpillar Tractor Company as an "Earthmoving Sales Representative" doing production cost estimating for most of the machinery envisioned for the decommissioning of this project.

   c. I was for five years general manager of a Caterpillar dealership that sold and serviced and rented most of the machinery envisioned for the decommissioning of this project.

   d. I was the owner and CEO for 9 years of a John Deere construction Machinery dealership that sold, serviced and rented most of the machinery envisioned for the decommissioning of this project.

   e. During the above mentioned 19 years, I prepared countless estimates of machine and man hours necessary to do various industrial and commercial projects.

SUMMIT POWER

5. In addition we have used the extensive experience of Bob Young. Bob was the construction manager for White Creek and continues to serve as the project Owner's Representative. He is also the construction manager of the new neighboring project, Harvest Wind. This work was preceded by many years of energy project permitting, construction engineering, and management. His knowledge of local contractor resources was used to estimate costs, however knowing that local resources 30 years from now is subject to the same blue-sky assumptions.

We hope that this helps make the County more comfortable with the assumptions used in the calculations underlying Harvest Wind's decommissioning plan.

Sincerely,

Eric Gjelde
Senior Vice President
Summit Power Group, Inc

CC: Brian Knox

General Metals of Tacoma, Inc
(dba) **SCHNITZER STEEL INDUSTRIES**
1902 Marine View Drive
Tacoma, WA 98422
(253) 572-4000
Fax (253) 593-8986

TO: ERIC GUELDE SUMMIT TOWER GROUP DATE: 4-22-09

FROM: ERIC ENQUIST FAX # 206 780-3571

RE: BUDGETARY QUOTE DEMO SCRAP / TOWER PROJ.

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET:

MESSAGE:

BASED UPON OUR DISCUSSION WE ARE QUOTING $85/$95 - NET TON DELIVERED TO OUR YARD IN TACOMA FOR TOWER SECTIONS IN UNPREPARED CONDITION (50'- LENGTHS)

ERIC ENQUIST
(206) 510-1786

IF YOU DO NOT RECEIVE THE COMPLETE TRANSMISSION, PLEASE CALL (253) 572-4000

Tacoma Metals, Inc.
1754 Thorne Road
Tacoma, WA 98421

Phone: 253.627.1440
Fax: 253.383.3155

Fax Cover

Date: 04-22-09

To: Summit Power Group Attention: ERIC RJELDE

From: GREGG MARSHALL

Pages including cover: 1

Message:

20,000 lbs of #2 copper - delivered to us. Today's market value = $1.80 per lb.

Regards,

Gregg

EXHIBIT A TO DECOMMISSIONING PLAN - HARVEST WIND ENGERGY PROJECT

ASSESSMENT OF DECOMMISSIONING COSTS

Klickitat County, Washington

Rev: 4/22/09

	Dec 09 * $ per WTG	Inflation Rate	Dec 2039 $ per WTG	Number WTG
REMOVAL OF WTG, TOWERS AND RELATED EQUIPMENT				
Removal of Hub and Blades	$ 14,862			
Removal of Nacelle w/ Gearbox & Generator	$ 17,938			
Removal of Tower	$ 23,575			
Removal of Transformer	$ 5,125			
Remoal of Transformer Oil	$ 1,230			
Demolition/Removal of Foundation to minus 4 ft	$ 32,287			
Soil and Vegitation Reclamation	$ 17,937			
Project Road Removal	$ 30,750			
County Road Repair	$ 2,562			
Soft Costs	$ 7,313			
Total Decommissioning Cost	**$ 153,580**	**2.50%**	**$ 322,145**	**43**

PROJECTED SCRAP/SALVAGE VALUE OF WTG, TOWERS AND RELATED EQUIPMENT (see tab 3 "Salvage Price Detail)					Inflation Rate	Dec 2039 $ per WTG	Number WTG
Steel	659.52	tons @	92.70	$ 61,138	see tab 3	$ 189,954	
Copper	9.93	tons @	3,708.00	$ 36,817	see tab 3	$ 204,423	
Oil	155.00	gal @	1.13	$ 176	see tab 3	$ 426	
Other							
Total Salvage Value				**$ 98,130**		**$ 394,804**	**43**
Maximum Salvage Value Credit Allowed at 35% of Decommissioning Cost				**$ 53,753**		**$ 112,751**	**43**

EXHIBIT A TO DECOMMISSIONING PLAN - HARVEST WIND ENGERGY PROJECT

ASSESSMENT OF DECOMMISSIONING COSTS

Klickitat County, Washington

Rev: 4/22/09

NET DECOMMISSIONING COST	$ 99,827 EOY 0	$ 112,751 EOY 30	43
		$ 80,730 EOY 20	43
ANNUAL SINKING FUND DEPOSIT BEGINNING YE 2016 & CONTINUING THRU YE 2029	$ -		
NPV (12/31/2009) OF 30 YR DECOMM COST (w/o salvage deduct)	$ 1,903,282		

EXHIBIT A TO DECOMMISSIONING PLAN - HARVEST WIND ENGERGY PROJECT

ASSESSMENT OF DECOMMISSIONING COSTS

Klickitat County, Washington

Rev: 4/22/09

* 30 yr Treasury Bond as of 11/20/07

** Composite credit rate adjustment based on estimated creditw of equity investors; public vs private and size for utilities. Weigh adjustment prorata to capital contibution share.

Dec 2039 $ Total	PER WTG	* Inflation on 2008	2009	2010	2011	2012
	Inflation on YE $2008 for Decommissioning	2.50% inflation	$ 153,580	$ 157,420	$ 161,355	$ 165,389
	Inflation on YE $2008 for Salvage - allowed	See tab 3				
	Discount 30 yr Cost to Year 20 for Decommissioning net of salvage	10.00% disc rate				
$ 13,852,223	Inflation on YE $2008 for Salvage - projected	See Tab 3				
	Sinking Fund Deposits Accruing Interest @	7.00% interest				
	Total Accrual					
Total						
	Present Value Gross Decommiss Cost w/out Salvage for Book Liability	Base Rate * 4.49%				
		Credit Adj ** 2.35%	PV @ 12/31/09 $ 1,903,282			
$ 16,976,556		Cred Adj Rate 6.84%				
$ 4,848,278						

$ 9,003,945
EOY 30

$ 3,471,411
EOY 20

vorthiness
ıted credit

2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
$ 169,524	$ 173,762	$ 178,106	$ 182,559	$ 187,122	$ 191,801	$ 196,596	$ 201,510	$ 206,548	$ 211,712

			$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940
			$ -	$ 10,776	$ 22,306	$ 34,643	$ 47,844	$ 61,969	$ 77,082
			$ 153,940	$ 318,655	$ 494,900	$ 683,483	$ 885,266	$ 1,101,174	$ 1,332,196

2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
$ 217,005	$ 222,430	$ 227,991	$ 233,690	$ 239,533	$ 245,521	$ 251,659	$ 257,950	$ 264,399	$ 271,009

						$ 3,471,411
$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940	$ 153,940
$ 93,254	$ 110,557	$ 129,072	$ 148,883	$ 170,080	$ 192,762	$ 217,031
$ 1,579,389	$ 1,843,886	$ 2,126,897	$ 2,429,720	**$ 2,753,739**	**$ 3,100,441**	**$ 3,471,411**

2033	2034	2035	2036	2037	2038	2039
$ 277,784	$ 284,729	$ 291,847	$ 299,143	$ 306,622	$ 314,288	$ 322,145

Allowed Salvage Value per WTG	$	112,751
Net Decommissioning Cost per WTG	**$**	**209,394**
Total Net Decommissioning Cost	**$**	**9,003,945**
Assumed Salvage Value per WTG	$	394,804
Total Assumed Salvage Value	$	16,976,556
	$	**13,852,223**

Klickitat Co. Planning Dept.

LINDEN RANCH WIND ENERGY PROJECT DECOMMISSIONING PLAN

AUG 2 8 2009

Received

This Decommissioning Plan for the Linden Ranch Wind Energy Project is required by Permit Condition 29. All decommissioning and restoration activities will be conducted in accordance with this Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity.

1. **Decommissioning Timing.** Permit Condition 29 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.
   1.1. ***Useful Life of the Facility and Events Triggering Decommission.*** The Facility is assumed to have a useful life of 30 years. The trend in the wind energy industry has been to "repower" older projects by upgrading existing towers and project infrastructure with more efficient turbines and related equipment. This would extend the useful life to a period far longer than 30 years. The leases with the land owners are for 30 years with possible options for additional lease periods. The Facility could be terminated under the following circumstances:

   - At the end of the lease terms or extended lease terms.
   - At the end of the commercial operation of the Facility.
   - In the unlikely event of a material breach of lease terms.
   - As a result of unknown or unpredicted events, such as government condemnation or natural disasters.

   If the Facility is terminated, the permit holder will obtain the necessary authorization to proceed with the Facility decommissioning.

   1.2. *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:
   - Failure of a turbine or its related equipment where repair or replacement is impractical.
   - The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
   - Economic impracticability.

   If the individual turbines are terminated, the permit holder will obtain the necessary authorization to proceed with turbine decommissioning.
2. **Decommissioning Scope.** The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.
   2.1. ***Method of Decommissioning the Project and Restoring the Project Site.*** The method of decommissioning the turbines has five parts:
   - Dismantling of turbines, towers, and the other above-ground equipment, performing an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;

- Removal of below-ground foundations and components as required in the leases;
- Protect roads within the County from damages beyond usual wear and tear;
- Soil and vegetation reclamation; and
- Removal of Facility roads.

2.1.1. *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment. The tower, equipment in the nacelles, and transformers are expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material will be disposed of at authorized sites.

2.1.2. *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pad used for the transformer will also be removed. This will allow agricultural use of the Facility site after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. In addition, underground cable removal is expected to be more environmentally disturbing than leaving cables in one place. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3. *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. The permit holder is responsible for all damage to roads, beyond usual wear and tear. The permit holder shall enter into a road haul agreement with County Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4. *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area to be reclaimed and will include re-grading to restore soil and original contours and revegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

2.1.5. *Removal of Facility Roads.* One of the final steps in decommissioning will be removal of Facility roads. Decommissioned roads will be reclaimed to restore the surface grade and soil to a condition useful for either agriculture or wildlife habitat, depending on the use of surrounding lands. Roads also may be left in place based on landowner preference. It is expected that landowners generally will not want the Project to decommission the widened portion of farm roads that pre-existed the Facility, but may want the new access roads built for the Facility decommissioned.

2.1.6. *Method of Decommissioning Individual Turbines and Restoring the Area Containing Decommissioned Turbines.* The first step in the individual turbine decommissioning activities would be to dismantle the turbine, the support tower, and the pad mounted transformer. The tower, much of the

equipment in the nacelle, and the pad-mounted transformer is expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material would be disposed of at authorized sites. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine would need to remain in place to access the remaining wind turbines for operational maintenance activities.

2.2. *Decommissioning Funding and Security Arrangement*

2.2.1. *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, the permit holder shall provide financial security ("Decommissioning Security") consistent with the policies set forth in this subsection, and determined acceptable by the Planning Director.

2.2.2. *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3. *Forms of Decommissioning Security.* The permit holder shall provide Decommissioning Security through one of the forms recognized in subsection 2.2.8 below, or through another form approved by the Planning Director as substantially equivalent. Permit holders shall specify and obtain approval of the form of Decommissioning Security in the Decommissioning Plan. Of the five recognized forms of Decommissioning Security listed below, two are based on the financial standing of permit holder itself, namely the corporate guaranty and the utility ownership. Permit holders that qualify for these forms of Decommissioning Security do so by demonstrating their overall financial stability. The other three, deposit accounts, bonds and letters of credit, are based on separately-established security mechanisms funded by purchase or cash deposits.

2.2.4. *Deadline for Funding Decommissioning Security.* Any project using a bond, letter of credit, or deposit account shall achieve the requisite level of Decommissioning Security funding no later than a specified date. That date, referred to as the "Security Funding Date," will be identified in the approved plan and will normally be no later than twenty years after the project's commercial operation date. Twenty years is intended to approximate the point when turbines enter the last third of their expected useful lives. It is at that point that separate security becomes appropriate to ensure that project equipment would not be abandoned without full implementation of the Decommissioning Plan.

2.2.5. *Schedule to Achieve Full Funding of Decommissioning Security.* The Plan shall include a schedule for building up the Decommissioning Security over time so that the full funding is achieved by the Security Funding Date. The permit holder shall begin funding the Decommissioning Security no later than the fifth to seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date.

2.2.6. *Extensions of Security Funding Date.* During project operation, the permit holder may request an extension of the Security Funding Date. The Planning Director may approve an extension if the permit holder demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date. Provision of security earlier than the Security Funding Date is permitted but would not typically be required.

2.2.7. *Credit for Value of Equipment.* To provide the required Decommissioning Security, permit holders using a deposit account, bond or letter of credit may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, bond or letter of credit. This credit shall not be in an amount in excess of 35% of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.
- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap a the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the permit holder to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value.

2.2.8. *Recognized Forms of Financial Security.* The permit holder intends to use the guaranty option of financial security, as described below.

1. **Guaranty.** The permit holder shall provide financial security for the performance of its decommissioning obligations in a form acceptable to the County. The financial security shall be a performance bond; or a payment guaranty guaranteeing the project's Decommissioning obligations hereunder form an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (a) if such entity has a Credit Rating from Standard and Poor's BBB – or better or (b) if such entity has a Credit Rating from Moody's Baa3 or better ; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000.00.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require the permit holder to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.
4. **Plan Update.** The County and permit holder may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years, to reflect changing circumstances. The County may review and amend the Plan without the permit holder's agreement, and outside of this five year period, if:
    - there are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit; or
    - there is significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
    - there are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

    Plan revisions made outside of the five year cycle require a minimum of 45 days mailed notice before being finalized. Such revisions shall not be made without consulting with the permit holder, and reviewing any written comment submitted. In making the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties the permit holder would face in complying with the Plan revisions.
5. **Conclusion.** Based on the foregoing information, the applicant is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

    Please see the attached report, titled "Wind Turbine Component Recycling and/or Consignment Upon Decommissioning". This report demonstrates that the scrap and salvage value of the wind farm will exceed the 35% percent credit permitted by County ordinance, and so this credit should be provided for the Linden Ranch Wind Farm.

MILLER RANCH WIND ENERGY PROJECT
DECOMMISSIONING PLAN

This Decommissioning Plan for the Miller Ranch Wind Energy Project is required by Permit Condition 26. All decommissioning and restoration activities will be conducted in accordance with this Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity.

1. **Decommissioning Timing.** Permit Condition 26 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.
   1.1. ***Useful Life of the Facility and Events Triggering Decommission.*** The Facility is assumed to have a useful life of 30 years. The trend in the wind energy industry has been to "repower" older projects by upgrading existing towers and project infrastructure with more efficient turbines and related equipment. This would extend the useful life to a period far longer than 30 years. The leases with the land owners are for 30 years with possible options for additional lease periods. The Facility could be terminated under the following circumstances:

   - At the end of the lease terms or extended lease terms.
   - At the end of the commercial operation of the Facility.
   - In the unlikely event of a material breach of lease terms.
   - As a result of unknown or unpredicted events, such as government condemnation or natural disasters.

   If the Facility is terminated, the permit holder will obtain the necessary authorization to proceed with the Facility decommissioning.

   1.2. *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:
   - Failure of a turbine or its related equipment where repair or replacement is impractical.
   - The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
   - Economic impracticability.

   If the individual turbines are terminated, the permit holder will obtain the necessary authorization to proceed with turbine decommissioning.
2. **Decommissioning Scope.** The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.
   2.1. ***Method of Decommissioning the Project and Restoring the Project Site.*** The method of decommissioning the turbines has five parts:
   - Dismantling of turbines, towers, and the other above-ground equipment, performing an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;

- Removal of below-ground foundations and components as required in the leases;
- Protect roads within the County from damages beyond usual wear and tear;
- Soil and vegetation reclamation; and
- Removal of Facility roads.

2.1.1. *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment. The tower, equipment in the nacelles, and transformers are expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material will be disposed of at authorized sites.

2.1.2. *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pad used for the transformer will also be removed. This will allow agricultural use of the Facility site after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. In addition, underground cable removal is expected to be more environmentally disturbing than leaving cables in one place. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3. *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. The permit holder is responsible for all damage to roads, beyond usual wear and tear. The permit holder shall enter into a road haul agreement with County Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4. *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area to be reclaimed and will include re-grading to restore soil and original contours and revegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

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equipment in the nacelle, and the pad-mounted transformer is expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material would be disposed of at authorized sites. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine would need to remain in place to access the remaining wind turbines for operational maintenance activities.

2.2. *Decommissioning Funding and Security Arrangement*

2.2.1. *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, the permit holder shall provide financial security ("Decommissioning Security") consistent with the policies set forth in this subsection, and determined acceptable by the Planning Director.

2.2.2. *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3. *Forms of Decommissioning Security.* The permit holder shall provide Decommissioning Security through one of the forms recognized in subsection 2.2.8 below, or through another form approved by the Planning Director as substantially equivalent. Permit holders shall specify and obtain approval of the form of Decommissioning Security in the Decommissioning Plan. Of the five recognized forms of Decommissioning Security listed below, two are based on the financial standing of permit holder itself, namely the corporate guaranty and the utility ownership. Permit holders that qualify for these forms of Decommissioning Security do so by demonstrating their overall financial stability. The other three, deposit accounts, bonds and letters of credit, are based on separately-established security mechanisms funded by purchase or cash deposits.

2.2.4. *Deadline for Funding Decommissioning Security.* Any project using a bond, letter of credit, or deposit account shall achieve the requisite level of Decommissioning Security funding no later than a specified date. That date, referred to as the "Security Funding Date," will be identified in the approved plan and will normally be no later than twenty years after the project's commercial operation date. Twenty years is intended to approximate the point when turbines enter the last third of their expected useful lives. It is at that point that separate security becomes appropriate to ensure that project equipment would not be abandoned without full implementation of the Decommissioning Plan.

2.2.5. *Schedule to Achieve Full Funding of Decommissioning Security.* The Plan shall include a schedule for building up the Decommissioning Security over time so that the full funding is achieved by the Security Funding Date. The permit holder shall begin funding the Decommissioning Security no later than the fifth to seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date.

2.2.6. *Extensions of Security Funding Date.* During project operation, the permit holder may request an extension of the Security Funding Date. The Planning Director may approve an extension if the permit holder demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date. Provision of security earlier than the Security Funding Date is permitted but would not typically be required.

2.2.7. *Credit for Value of Equipment.* To provide the required Decommissioning Security, permit holders using a deposit account, bond or letter of credit may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, bond or letter of credit. This credit shall not be in an amount in excess of 35% of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.
- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap a the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the permit holder to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value.

2.2.8. *Recognized Forms of Financial Security.* The permit holder intends to use the guaranty option of financial security, as described below.

1. **Guaranty.** The permit holder shall provide financial security for the performance of its decommissioning obligations in a form acceptable to the County. The financial security shall be a performance bond; or a payment guaranty guaranteeing the project's Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (a) if such entity has a Credit Rating from Standard and Poor's BBB – or better or (b) if such entity has a Credit Rating from Moody's Baa3 or better ; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000.00.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require the permit holder to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.
4. **Plan Update.** The County and permit holder may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years. to reflect changing circumstances. The County may review and amend the Plan without the permit holder's agreement, and outside of this five year period, if:
    - there are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit; or
    - there is significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
    - there are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

    Plan revisions made outside of the five year cycle require a minimum of 45 days mailed notice before being finalized. Such revisions shall not be made without consulting with the permit holder. and reviewing any written comment submitted. In making the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties the permit holder would face in complying with the Plan revisions.
5. **Conclusion.** Based on the foregoing information, the applicant is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

    Please see the attached report, titled "Wind Turbine Component Recycling and/or Consignment Upon Decommissioning". This report demonstrates that the scrap and salvage value of the wind farm will exceed the 35% percent credit permitted by County ordinance, and so this credit should be provided for the Miller Ranch Wind Farm.

Wind Turbine Component Recycling and/or Consignment Upon Decommissioning

Report 2007-020

UEA-Report No. 2007-020, Project no. 2007_2_20 Private
20. February 2007

Decommissioning Assessment

Commissioned by Northwest Wind Partners, LLC

UEA Analysis19125 Willamette Drive, Post Office Box 527, West Linn, OR 97068 503 750-2946 ph 503 212-9694 fax
http://www.uea2000.com

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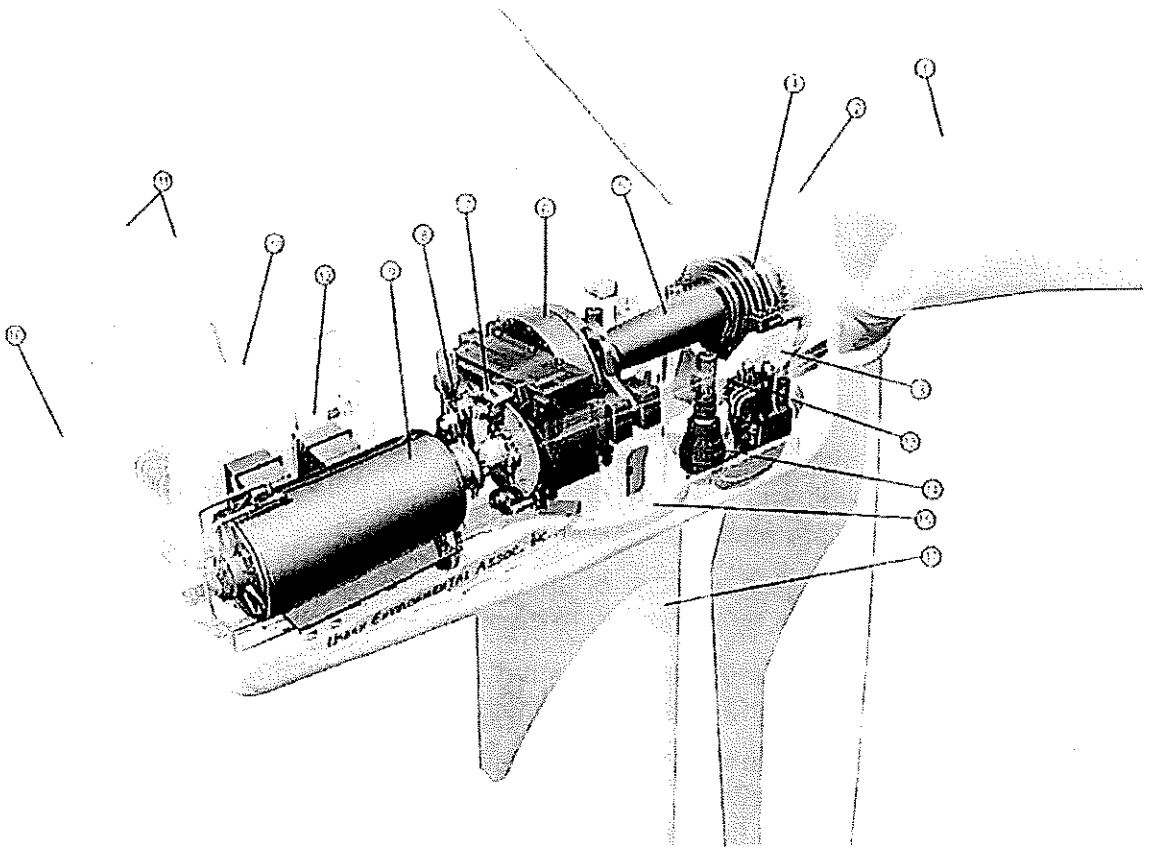
WIND TURBINE AND TOWER COMPONENT



20 February 2007

The following list names the labelled elements in the diagram

1 Rotor Blade,	7 Mechanical Disc Brake	13 Hydraulic System
2 Rotor Hub	8 Generator Coupling	14 Yaw Drive Motor
3 Turbine Frame	9 Generator	15 Yaw Ring Bearing
4 Main Rotor Bearing,	10 Cooling Radiator	16 Nacelle Cover
5 Rotor Shaft	11 Wind Instruments	17 Tower
6 Gearbox	12 Controller	

by Urban Environmental Assoc. Inc.
19125 Willamette Drive
West Linn, OR 97068

Introduction

This report presents an economic project examining the effects of utilizing all Wind Turbine components first through recycling by local and regional facilities and second reuse of the components through the sale to national wholesale consignment warehouses in the United States and Canada.

The project is designed to incorporate the procedure of decommissioning *Northwest Wind Partners, LLC* Wind Turbines in the most environmentally effective way once these units reach the end of their life cycle (est. 30 years). Urban Environmental Assoc., Inc. examined the economic options available at the end of the Wind Turbines useful life cycle, through the final decommissioning removal and/or replacement of the old Wind Turbines from the site.

The study is divided into two parts, as the aim is to make a sound economic comparison between recycling and reuse of all components of the Wind Turbines and, the respective division into phases as follows:

1) Phase 1 examines the condition and age of all components putting them into categories for onsite reuse or by marketing to alternate industrial consumers.

2) Phase 2 examines the analysis of the component parts for sourcing into the various commodities (metals and plastics, etc.) for recycling.

The study was inclusive of commodity trends using historic figures from 1998 through 2006. The results reflect Pacific Northwest commodity pricing considering market trends and fluctuations accounting for seasonal market demands and offers recommendations based on this for future decommissioning of Wind Turbines reaching the end of their useful life.

Component Assessment

The component parts of the Wind Turbine as described in this report are as follows:

1. **The Rotor Blades** are made of composite materials and use the power of the wind to turn the generator.
2. **The Hub** is usually made of cast iron and connects the rotor to the drive shaft and the rest of the drive train.
3. **The Turbine Frame**, frequently made of ductile, cast iron and is generally cast as a single piece of steel, and acts as the chassis.
4. **The Rotor Bearing** is a solid roller bearing of cold roll steel carrying the weight of the rotor and is balanced by the rest of the drive train
5. **The Rotor Shaft** is made from a spheroid type of graphite (SG) cast iron. It transmits power from the rotor coils of copper to the generator.
6. **Gearbox** design is a 3-stage gearbox (with helical planetary and helical spur gears machine steel) it increases the slow speed of rotation of the rotor 9e.g. 9 to 30 rpm) to that appropriate for the generator (e.g. 1,600 rpm)
7. **Disk Brake** a cast steel frame is mounted on the high speed side of the gearbox, is used to bring the machine to a halt and in keeping the rotor still when the machine is directed out of the full force of the wind.
8. **Generator Coupling** is a flexible coupling that connects the drive shaft to the generator of either polymer or copper/brass composition.
9. **Generator** is generally an asynchronous (induction) generator comprised of silicon steel plates and copper windings. The generator can be either liquid cooled as in the diagram on the cover of this study or air-cooled.
10. **Cooling Radiator** used in liquid cooled machines is usually made of copper and tubes and fins and a brass reservoir to keep the generator and gearbox at optimal temperatures when in use.
11. **Wind Measuring System** measures wind conditions and provides signals to the turbine control system. This component is a combination of IC electronic circuits boards and control panels.
12. **Hydraulic System** provides hydraulic pressure to equipment such as the disc and yaw brake system and has a salvage value in the steel it contains once all hydraulic oil has been removed and environmentally remediated.
13. **Yaw Drive** consists of planetary yaw gears usually cold rolled steel, and frequency controlled electrical motors (silicone steel plates with copper windings) and hydraulic brakes. This allows the nacelle to be rotated around the tower head so that it can always be brought into the full force of the wind.

Component Assessment Cont'

14. **Yaw Bearings** (usually made of solid copper) is mounted on the top of the tower, allows the nacelle to rotate around the top of the tower to follow the wind.
15. **Nacelle Cover** generally made of fiberglass or solid steel provides protection to the equipment from the elements.
16. **Tower** is a tubular steel structure to hold the nacelle above the ground and allows access to the nacelle for maintenance.

Method

The data collection for the turbines has mainly been carried out by *Northwest Wind Partners, LLC* on the basis of the item lists for the type of turbine used in the wind farms installed in the Pacific Northwest. As a starting point, all the items numbers on the list above are included and located in the graphic at the beginning of this report. The items listed were compiled from the company's production management system, that furthermore contained information about materials and weight on a very large part based on incoming raw materials and semi-manufactured articles during the construction phase of the Wind Farm. As regards to items, where the information has not been immediately accessible it is assessed in each case whether it would be relevant to search for further information about weight and material composition. This, among other things, would include a large number of screws and bolts and also minor electronic components that have not been listed for the purposes of this report. With regard some large items such as, gearbox and generator, the information originated from the manufacture or supplier.

Information about overall conditions for the farms, transmissions lines, foundations, electrical substations is not included in this assessment and should be obtained from *Northwest Wind Partners, LLC* and the owner operators and consulting engineers of the wind farm. In all instances, the information herein, is presented to and discussed with the consulting engineer for *Northwest Wind Partners, LLC.*

Where possible the information about various materials is drawn from databases subscribed to by Urban Environmental Assoc., Inc. and presented to Dr. Luneke for the purposes of this report. In cases where data was missing or the existing data has been inadequate, the needed data was acquired through supplier networks, and vendors who actively trade in these commodities. In some instances it has been necessary to make assumptions based on this Researchers' 20 years experience with international commodity markets, and a comprehensive system of timing deliveries of these commodities to the buyers.

Course of Events

Using the description of the component parts in the *Northwest Wind Partners, LLC* Wind Turbine our task will be to consolidate and isolate items of value that can be recycled after dismantling each Wind Turbine. The estimates in the recycling scenario below are used to account for unforeseen contamination of the individual commodities associated with the various components to be recycled.

The initial event approach to recovering value from the component parts of the Wind Turbines will be to take the components removed from the Turbines such as the individual switch gear, electric motors, cooling systems, hydraulics, generators, gearboxes, and intact electronics assign them an estimated value based on the wholesale market for these components that have an alternate use to the industrial market. Typically the consignment of such items one can find a buyer, however if no immediate buyers are available there are companies who will purchase inventory to be sold later. In all cases the sale of components will have at the least a 50% greater value than recycling the same components.

Once this method of examination has been developed and the individual cost associated with disposal of non-recyclable components a net value of each Wind Turbine will be established from this method.

The final project event will be to establish a "Phase 2" examination of the component parts of each Wind Turbine being decommissioned for the recycling markets in the region.

Recycling Scenario Levels:

Steel components listed above can reach a recycling rate of..... 90%

Iron components listed above can reach a recycling rate of..... 90%

Copper components listed above can reach a recycling rate of..... 90%

Aluminum components listed above can reach a recycling rate of..... 90%

Glass Fiber components listed to be landfill w/recycling rate of..... 0%

Other plastic components listed to be landfill w/recycling rate of..... 0%

Rubber components listed to be landfill w/recycling rate of..... 0%

The Decommissioning once it begins using the estimated weights of commodities listed below and the percent of recovery assigned to each individual Wind Turbine as described above accounting for miscellaneous contamination associated with each component the following values can be assumed from a Phase 1 event program being applied.

Individual Wind Tower Value:

1. The Rotor Blades

consist of fiber reinforced plastic. It can be assumed as this material has little of no reuse or recycled value today that in ten (10 to 20) years it will still require disposal. With the present rates of disposal in the region being $60 to $75/ton at most transfer stations it is recommended that the non-recyclable recovered material be handled as demolition and the debris be brought directly to the Roosevelt landfill in Goldendale, WA or to the Columbia Ridge Landfill in Arlington, OR. The rates at these landfill sites can be currently negotiated based on the total tons for disposal, and it is this researchers opinion that rates will also be open for negotiations in the future. Current disposal rates for dry waste range from $20 to $30/ton. Assuming direct hauls to the landfills are used the average disposal expense and haul fee for the 17 tons of material to be disposed of per Wind Turbine Rotor Blades should be benchmarked at:

Disposal $429 charge (21.45 tons @ $20/ton disposal charge)

Hauling $400 ($200/haul for two (2) hauls for the tons)

The steel value associated with the Rotor Blades if separated is estimated to yield 4 tons of scrap steel valued today at:

Recycled $396 credit (4.4 tons @ +$90/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+

2. The Hub and Nacelle

is usually made of cast iron and connects the rotor to the drive shaft and the rest of the drive train. The estimates of the scrap metal content of this housing is 57.2 tons of steel, approximately 3.9 tons of copper and 3.9 tons of fiber glass reinforced plastic. The fiber glass and plastic can be assumed to have little of no reuse or recycled value today and in ten (10 to 20) years it can be assumed it will still require disposal. With the present disposal rates in the region of $60 to $75/ton at most transfer stations it is recommended that this material be handled as demolition an should be brought directly to the Roosevelt landfill in Goldendale, WA or to Columbia Ridge Landfill in Arlington, OR. The rates at these landfill sites can be currently negotiated based on the total tons for disposal, and it's this researchers opinion that rates will be open for negotiations in the future. At present disposal rates for dry waste range from $20 to $30/ton, and the direct haul method is highly recommended to yield:

The Hub and Nacelle Cont'

Disposal $78 charge. (3.9 tons @ $20/ton disposal charge)

Hauling $200 ($200/haul for two (1) hauls for the tons)

The steel value associated with the Hub or Machine Housing if separated is estimated to yield 52 tons of heavy steel valued today at:

Recycled $5,148 credit (57.2 tons @ -$ 90/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+

The copper value associated with the Hub or Machine Housing if separated is estimated to yield 3.5 tons of heavy copper valued today at:

Recycled $20,627 credit (3.9 tons @ -$5,289/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+

3. The Tower

is a tubular steel structure to hold the nacelle above the ground and allows access to the nacelle for maintenance. The estimates of the steel scrap content of the Tower are 275 tons of scrap steel. Other metals are estimated as follows; approximately 4 tons of copper from conductor rails and 7 tons of Aluminum from climbing gear and platforms.

There is no fiberglass or other plastics associated with this component therefore there should be no significant waste that would require disposal and hauling fees except the estimated 10% as described in the in the assumptions for each metal commodity listed in the "recycling scenario levels" earlier in this report.

The scrap steel value associated with the Tower if separated is estimated to yield 275 tons of heavy steel valued today at:

Recycled $24,750 credit (275 tons @ -$ 90/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+

The copper value associated with the Tower if separated is estimated to yield 3.5 tons of heavy copper valued today at:

The Tower Cont'

Recycled $21,156 credit (4 tons @ -$5,289/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+ apply

The Aluminum value associated with the Tower if separated is estimated to yield 7.7 tons of structural Aluminum valued today at:

Recycled $20,390 credit (7.7 tons @ -$2,648/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+ applies

4. The Switch Gear

The switchgear is recycled or disposed of according to electronic scrap regulations. The switchgear mass to be disposed of is approximately 3.5 tons. The switchgear has a value in the after market, but for this scenario we will deal just with the individual parts of the switchgear that can be recycled. There is no fiberglass or other plastics associated with this component therefore there should be no significant waste that would require disposal and hauling fees except the estimated 10% as described in the in the assumptions for each metal commodity listed in the "recycling scenario levels earlier in this report.

The scrap steel value associated with the Switch Gear if separated is estimated to yield 2.2 tons of scrap steel and 1 ton of copper valued today at:

Recycled $218 credit (2.42 tons @ -$ 90/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+

The copper value associated with the Tower if separated is estimated to yield 3.5 tons of heavy copper valued today at:

Recycled $5,818 credit (1.1 tons @ -$5,289/ton credit)

Hauling $ 0 charge. container hauling for recycling w/ loads of 4 tons+ applies

5. Substation including Transformer

Generally one substation is included at the base of each wind turbine, that is equipped with a transformer, metering devices and medium-voltage switchgear. This can be recycled or disposed of according to electronic scrap regulations. Approximately 12.98 tons of electronic scrap can be recovered here. There is no fiberglass or other plastics associated with this component therefore there should be no significant waste that would require disposal and hauling except the estimated 10% as described in the in the assumptions for each metal commodity listed in the "recycling scenario levels" earlier in this report.

The scrap steel value associated with the Switch Gear if separated is estimated to yield 9.9 tons of scrap steel and 3.85 ton of copper valued today at:

Recycled	$891 credit (9.9 tons @ -$ 90/ton credit)
Hauling	$ 0 charge. container hauling for recycling w/ loads of 4 tons+

The copper value associated with the Tower if separated is estimated to yield 3.85 tons of heavy copper valued today at:

Recycled	$20,363 credit (3.85 tons @ -$5,289/ton credit)
Hauling applies	$ 0 charge. container hauling for recycling w/ loads of 4 tons+

Conclusion

6. Estimated Recovered Value of Wind Farm

By the consolidation of the individual component part values through a "Phase 2 event recycling approach an individual Wind Turbine should yield a total recycled value net the disposal of inert dry waste contamination and a assuming a 90% total recovery estimate of **$ 106,785**.

Using the above estimated yield from the individual Wind Turbine and the assumption that the average wind farm will have approximately 75 Wind Turbines the total recycled revenues from the scrap metals recovered during a decommissioning of a typical Wind Farm would exceed **$8,008,800**.

7. Phase 1 Approach

Recovering value from the component parts of the Wind Turbine Decommissioning. As mentioned above typically with the consignment of such industrial component items one can find a buyer, however if no immediate buyers are available there are companies who purchase this type of inventory to be sold later. In all cases the successful sale of components will have at the least a 45% greater value than if recycled for their metals alone, e.g. Aluminum, Copper and Steel.

Using this assumption the total value of a wind farm if 90% of the components were successfully placed with a consignment broker such as those used by Urban Environmental Assoc, Inc. or sold outright to such brokers who desire to increase their inventory to sell later the subsequent values can be developed from data provided by *Northwest Wind Partners, LLC* as to the component product names, and manufacturers for the specific information relating to all the assembly systems used to originally manufacture the individual Wind Turbines.

Assuming 90% of all the components are successfully consigned and sold within one year of the decommissioning then components recovered and sold in this manner would be worth approximately 45% more than the value achieved through a Phase 1 event approach. The value of the Wind Farm being decommissioned would then be $11,612,760, an increase of **$3,604,760** over the Phase 2 event scenario of recycling the metals. However there would be the negative effect of storage for the unsold components over the year or more it would take to sell consignment inventory.

Finally the last option would be to simply sell off all the components to several consignment houses across the United States and Canada. This would bring a higher value than could be achieved by simply recycling the Wind Turbines for their metal value, but in all cases it would reduce the value of the components as the individual consignment houses would not be acquiring these parts for buyers they could immediately turn a sale with. Usually inventory purchasing by consignment companies reduces the increased value one can achieve to a level on average of only 20% greater than the recycled value, but the sale is immediate and there would be no cost for storage of the components while waiting for them to sell.

In this case the value of the Wind Farm being decommissioned would potentially be reduced to **$9,609,600**, an increase of only $1,601,600 over the Phase 2 event scenario.

The waste and recycling scenario is a very important phase of the life cycle of the wind turbine and wind farm respectively. With recycling and reuse programs in place for the material of the component parts we are able to reduce the negative environmental impacts greatly. Without recycling wind turbines would have greater negative environmental impacts.

Further it is highly recommended due to the seasonal nature of the recycling industry tied to the construction seasons in the United States the best time to begin the decommissioning of a wind farm in the Pacific Northwest would be from July through September.

This concludes the present assignment and it is our hope that the information contained herein is of value to the extent it was intended. All recycling values represented were derived from trends of the specific commodities over the period from 1998 through 2006. It is felt that the values represented in this report will continue to be within 10% of their present levels for commodities represented herein. Urban Environmental Associates, Inc. will provide additional resource information with respect to all Phase 1 and Phase 2 programs presented upon request as needed.

References:

Urban Environmental Exhibits ***1*** *LME,* ***2*** *Region Map of Recycling Vendors,* ***3*** *Map guide*

London Metals Exchange..... ..... http://www.lme.co.uk

American Metal Market ..... http://www.amm.com

COMEX ..... http://www.nymex.com/GC_spec.aspx

Metro Regional Government ..... http://www.metro-region.org/pssp.cfm?progservID=7

Metro Regional Government ..... http://www.metro-region.org/pssp.cfm?progservID=7

United States Department of Energy http://www1.eere.energy.gov/windandhydro/

Metals Recycling Resource

LONDON METAL EXCHANGE

February 20, 2007 Close

COPPER	Metric Tons	COPPER	US lbs.
CASH BUYER	$ 5,830.00	CASH BUYER	$ 2.6444
CASH SELLER & SETTLEMENT	$ 5,835.00	CASH SELLER & SETTLEMENT	$ 2.6467
3-MONTHS BUYER	$ 5,820.00	3-MONTHS BUYER	$ 2.6399
3-MONTHS SELLER	$ 5,830.00	3-MONTHS SELLER	$ 2.6444
15-MONTHS BUYER	$ 5,595.00	15-MONTHS BUYER	$ 2.5376
15-MONTHS SELLER	$ 5,605.00	15-MONTHS SELLER	$ 2.5421
27-MONTHS BUYER	$ 5,040.00	27-MONTHS BUYER	$ 2.2861
27-MONTHS SELLER	$ 5,050.00	27-MONTHS SELLER	$ 2.2906

DATE	COPPER SUPPLY Metric Tons
20 Feb 2007 (Data >1 day old)	215,500

NOTE:

Per US Ton = $5,289

ALUMINUM	Metric Tons	ALUMINUM	US lbs.
CASH BUYER	$ 2,918.50	CASH BUYER	$ 1.3236
CASH SELLER & SETTLEMENT	$ 2,919.00	CASH SELLER & SETTLEMENT	$ 1.3240
3-MONTHS BUYER	$ 2,830.00	3-MONTHS BUYER	$ 1.2832
3-MONTHS SELLER	$ 2,831.00	3-MONTHS SELLER	$ 1.2837
15-MONTHS BUYER	$ 2,663.00	15-MONTHS BUYER	$ 1.2076
15-MONTHS SELLER	$ 2,673.00	15-MONTHS SELLER	$ 1.2121
27-MONTHS BUYER	$ 2,453.00	27-MONTHS BUYER	$ 1.1125
27-MONTHS SELLER	$ 2,458.00	27-MONTHS SELLER	$ 1.1148

DATE	ALUMINUM SUPPLY Metric Tons
20 Feb 2007 (Data >1 day old)	762,775

NOTE:

Per US Ton = $2,648

LONDON METAL EXCHANGE

Me. . Regional Area Recycling Assets

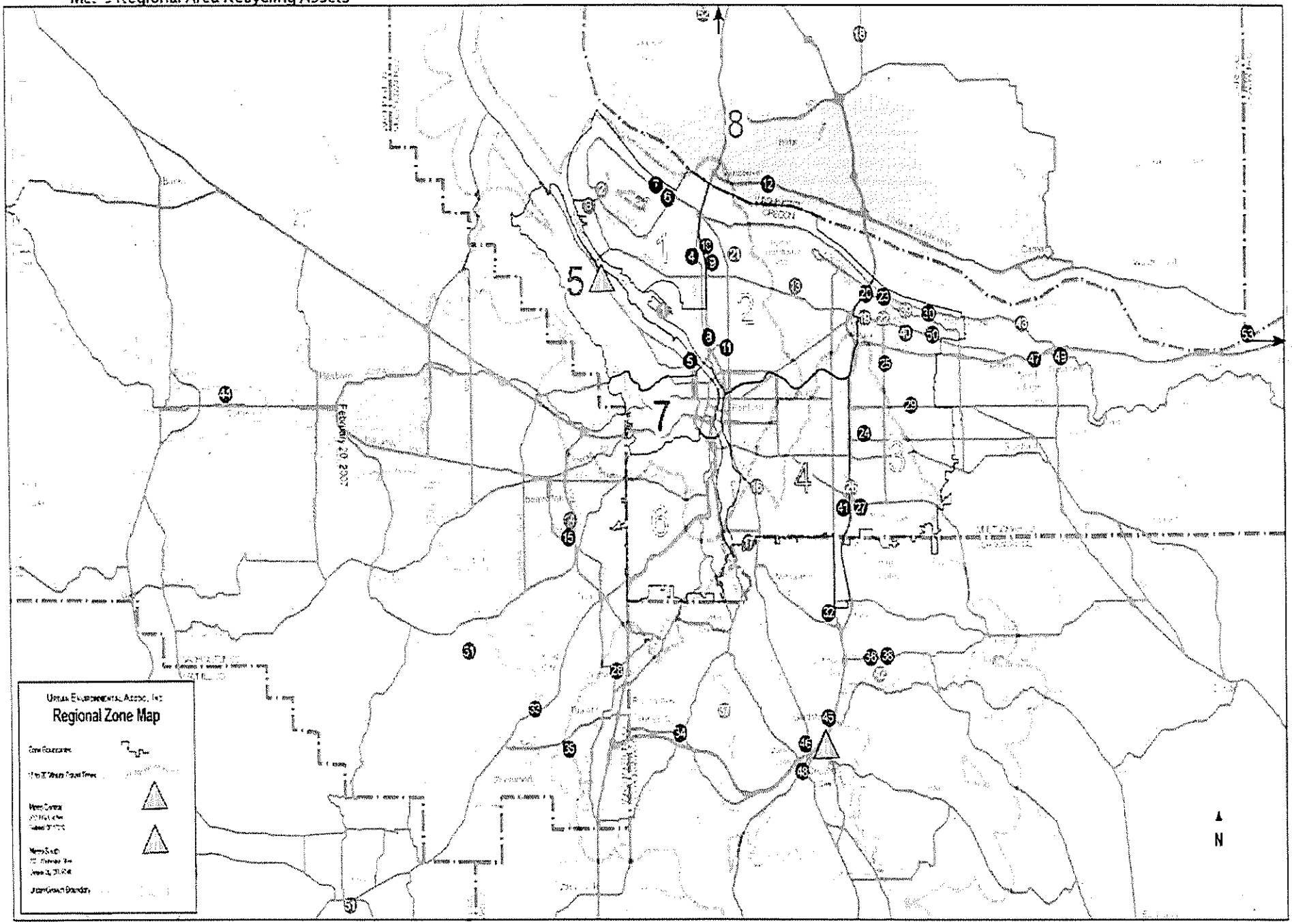


Exhibit 2

Recycling ...urces
Metro Regi...al Area

Urban Environmental Assoc, Inc <kbabb1104@...com>

Locator	Name	Address	City	Phone	Miles from	Commodities Recycled	Service	Prices	Prices
I	**From: Metro Central**	6161 NW 61st, Portland	Portland	503 657-2872	0	Prices in order of commodity displayed	Pick-up	Paid	Charged
1	**Environmental Fibers International**	4325 N. Commerce St. (AGG)	Portland	(503) 737-2100	2.3	Accepts all grades of paper and OCC, Shrinkwrap	Pick-up	$60 to $65/ton, $50/ton	
2	**American Compost**	9707 N Columbia Blvd	Portland	(503) 286-0886	3.8	Wood Products, Concrete, dirt, asphalt	Deliver		$5.00/yd
3	**Schnitzer Steel Products**	12005 N Burgard	Portland	(503) 286-5771	3.9	Metal; iron, other steel items	Pick-up	Fe>45%	
4	**Habitat for Humanity Re-Store**	1814 N. Columbia Blvd.	Portland	(503) 287-9529	4.0	All intact building materials	Pick-up	Free	Free
5	**Carton Service Inc.**	2211 NW Front Ave.	Portland	(503) 227-6428	4.3	All packaging peanuts bagged	Pick-up	Free	Free
6	**Pacific Land Clearing & Recycling**	4044 N Suttle Rd.	Portland	(503) 285-8777	4.8	Rubble, Asphalt roofing, roofing w/felt pad	Pick-up		$3.50/yd, $50/ton
7	**Oil Re-Refining**	4150 N Suttle Rd.	Portland	(503) 286-8252	4.8	Motor Oil, Antifreeze, Oil Filters	Pick-up	Oil_ $.15/gal	$.50/gal, $.25 ea
8	**The Rebuilding Center**	3625 N Mississippi Ave.	Portland	(503) 331-1877	4.9	Toilets, Tubs, Sinks, etc.	Pick-up	Free	Free
9	**RB Recycling**	8501 N Borthwick	Portland	(503) 283-2261	5.2	All Rubber tires car and truck	Pick-up		$65/ton
10	**Wilkins Trucking Co. Inc.**	1096 N. Schmeer Rd.	Portland	(503) 283-3000	5.5	Concrete and other rubble	Deliver		$5/yd
11	**Battery X-change Inc.**	3007 NE Martin Luther King Blvd.	Portland	(503) 249-0101	7.8	Acid Batteries	Pick-up	Battery_Pays $.15 ea	
12	**Interstate Plastics, Inc.**	4200 Columbia Way, Bldg B	Vancouver, WA	(360) 694-1753	8.1	Industrial Plastics including PVC, acrylic	Deliver	.10/lbs to .15/lbs	
13	**Metro Metals Northwest**	5611 NE Columbia Blvd.	Portland	(503) 287-8861	9.0	All Ferrous and Non Ferrous Metals (Al, Cu, Brass)	Pick-up	Fe<38%*1, LME*2< 20%	
14	**Quantum Resource Recovery**	10750 SW Denney Rd.	Beaverton	(503) 646-2427	9.2	All Ferrous, Non Ferrous and Industrial Plastics	Pick-up	Fe<43%* , LME*<38%	Plastics Free
15	**Northwest Ribbon Recycling**	8175 SW Nimbus Building #11	Beaverton	(503) 641-5156	9.9	Electronic Recycling and industrial plastics	Pick-up	Free	Free
16	**Far West Fibers/SE Portland**	5525 SE 28th	Portland	(503) 238-1640	10.3	All Paper recycled, Shrink wrap	Pick-up	$60 to $65/ton, $50/ton	
17	**R2 Pallet**	12780-B SE Ochoco	Milwaukie	(503) 653-1297	11.7	All 48x40 wood pallets	Deliver	$2.00/pallet	
18	**H & H Wood Recyclers**	8401 NE 117th Ave.	Vancouver, WA	(360) 892-2805	12.5	Yard Debris; wood, Concrete	Deliver		$5.00/yard
19	**Northwest Wood and Fibre**	11005 NE Marx Street	Portland	(503) 252-2614	12.5	Wood, clean construction lumber, Painted wood	Deliver		$3.00/yard
20	**The Wall**	5225 NE 112th	Portland	(503) 735-9255	12.6	Concrete and a small amount of rubble	Deliver		$1.00/Ton
21	**Fazio's Landfill and Recycling**	8433 NE 13th Ave.	Portland	503 349-3540	12.7	Sorting Line fines, concrete and other rubble	Deliver		$3.00/ton
22	**Far West Fibers/NE Portland**	12820 NE Marx St.	Portland	(503) 255-2299	13.3	All paper recycled, shrinkwrap	Deliver	$60 to $65/ton, $50/ton	
23	**PC Plastics**	5530 NE 122nd Unit D	Portland	(503) 720-7689	13.5	Plastic hangers; polystyrene food foam	Deliver	Free	Free
24	**Portland Sand & Gravel**	10717 SE Division	Portland	(503) 252-3497	13.5	clean dirt, rock, concrete, brick, blacktop, asphalt	Deliver	Free	$4.00/yard [illegible]
25	**East County Recycling**	12409 NE San Rafael	Portland	(503) 253-0867	13.7	clean concrete, asphalt and brick	Deliver		$2.00/yard
26	**Smurfit Recycling**	6328 SE 100th Ave.	Portland	(503) 777-4600	14.3	All paper Recycling and some plastics	Pick-up	$65 to $70/ton, $60/ton	Plastic Free
27	**Pacific Land Clearing & Recycling**	6400 SE 101st	Portland	(503) 774-6939	14.4	Composition roofing and standard residential roofing	Deliver	$45.00/ton	
28	**Earth Protection Services**	7272 SW Durham Rd., Ste. 100	Tigard	(503) 620-2466	14.4	Electronic Recycling, TV's, Florescent Bulbs	Pick-up		$.12/lbs, $.25/foot
29	**Laser Resource**	14324 SE Stark St	Portland	(503) 253-9274	15.3	Laser Cartridges	Deliver	Free	Free
30	**Denton Plastics**	4427 NE 158th	Portland	(503) 257-9946	15.6	all industrial plastics [illegible] wrap and PS Agricultural Pipe	Pick-up	Free	Free
31	**Lakeside Reclamation/Grabhorn Inc.**	14930 SW Vandermost Rd	Beaverton	(503) 628-1866	15.9	C & D Waste, Clean Concrete	Deliver		$50.00/ton, Free
32	**McFarlane's Bark**	12345 SE Johnson Rd.	Milwaukie	(503) 659-4240	16.5	grass, leaves, chips, sod, limbs< 4' in length	Deliver		$28/ton
33	**Grimm's Fuel Company**	18850 SW Cipole Rd.	Tualatin	(503) 638-3623	17.7	Old wood waste, paint and most nails are OK	Deliver		$5.00/yard
34	**S & H Logging**	20200 SW Stafford Rd.	Tualatin	(503) 638-1011	17.7	Wood Waste Products	Deliver		$7.00/yard
35	**RPS Industries**	11105 SW Industrial Way Bldg. 6, Bay 1	Tualatin	(503) 691-5972	18.1	Polystyrene packing pellets (peanuts)	Deliver	Free	Free
36	**Portland Road & Driveway**	10500 SE Jennifer St.	Clackamas	(503) 650-5006	19.1	Concrete, dirt, asphalt	Deliver		$2.00/yard
37	**Minsinger's Nursery**	655 Rotemich Road	West Linn	(503) 636-1843	19.6	clean leaves, sawdust, shavings limbs, and trimmings	Deliver		$1.00/yard
38	**Space-Pak Corp**	12330 SE Hwy 212	Clackamas	(503) 656-7177	19.6	Polystyrene foam packaging pellets (peanuts)	Pick-up	Free	Free
39	**Oregon Recycling Service, Inc.**	14041 N.E. Sandy Blvd.	Portland	(503)261-7300	19.7	All paper recycled, shrinkwrap	Pick-up	$65 to $70/ton, $60/ton	
40	**Western Strategic Materials**	14041 N.E. Sandy Blvd.	Portland	(503) 255-0393	19.7	bottle and plate glass	Pick-up	$7.00/ton	
41	**Spencer Environmental, Inc.**	6400 SE 101st Ave.	Portland	(503) 788-2330	19.9	Antifreeze; Waste Oil; auto Oil filters	Pick-up	Oil_$.07/gal	$.10/gal, $.15 ea
42	**Clackamas Compost Products**	11620 SE Capps Rd.	Clackamas	(503) 557-1028	19.9	Yard Debris, old wood waste, painted is OK	Deliver		$5.00/yard
43	**Allwood Recyclers**	23001 NE Marine Dr.	Fairview	(503) 667-5497	20.0	Concrete, dirt, asphalt, Wood, Yard debris	Deliver		$6.00/yard
44	**Computer Drive Connection, Inc.**	909 N. Fremont Lane	Cornelius	(503) 992-0180	20.0	Electronic equipment accepted: Monitors (all types)	Pick-up	Free	Free
45	**Pacific Land Clearing & Recycling**	16020 S. Park Place Ct.	Oregon City	(503) 285-8777	20.2	Rubble, Asphalt roofing, roofing w/felt pad	Pick-up		$1.00/yd, $40/ton
II	Metro South Transfer	2001 Washington Street	Oregon City	(503) 657-2872	20.3	Regional Solid Waste, MSW	Deliver		$67.18/ton
46	**T.G. Pallet Repair**	1729 Washington St.	Oregon City	(503) 655-5015	20.7	wooden pallets in any condition and all sizes	Pick-up	Free	Free
47	**Toner Inx**	24023 NE Stark Ln Suite 108	Wood Village	(503) 669-3439	21.1	Printer cartridge, Laser printer cartridges	Pick-up	Free	Free
48	**Battery X-change Inc.**	602 Seventh Street	Oregon City	(503) 656-7407	21.2	Acid Batteries	Pick-up	Battery_$.65ea	

CONFIDENTIAL FILE

Exhibit 3

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Recycling ɔurces
Metro Regi..al Area

Locator	Name	Address	City	Phone	Miles from	Commodities Recycled	Service	Prices	Prices
49	Recycle America	869 nW Eastwind Dr	Troutdale	(503) 667-5264	21.7	Dry Waste, Commercial	Deliver	$65.00/ton	
50	Hickory Springs of California, Inc.	3900 NE 158th Avenue	Portland	(503) 255-4650	23.1	Carpet Foam Recycled baled at 750 lbs	Deliver	$.[1]/lbs. (Baled)	
51	SP Newsprint	1301 South Wynooski	Newberg	(503) 538-2151	30.9	Hog fuel	Deliver	$18 to $20/ton	
52	Weyerhaeuser	3401 Industrial Way	Longview	(360) 425-2150	59.9	Hog fuel	Deliver	$16.00/ton	
53	Wasco County Landfill	2550 Steele Road	Dallas	(541) 296-4082	85.2	Solid Waste, MSW All Waste	Deliver	$30.00/ton	
54	Philip Environmental	625 S 32nd St	Wanapgal, WA	(503) 252-3618 360) 925-8924		Hazardous Waste contract with Metro	pick up only		Metro Contract Fees
55	Bio-Med of Oregon (Stericycle Inc.)	830 Westlake Avenue	Morton, WA	(360) 496-5988		Medical Syringes, Sharps Shallon Containers	pick up only		$22.[50]/each
56	Ecolights Northwest	9411 8th Ave., South	Seattle, WA	(206) 340-1247		Florescent Bulbs and Ballasts	pick up only		$.[29]/foot
57	New West Gypsum, Inc.	1321 54th Ave., E	Fife, WA	(253) 922-9345		Clean Sheetrock	pick up only		$44/ton
58	Rechargable Battery Recycling Corp.*	1000 Parkwood Circle	Atlanta, GA	(678) 419-9990		All Rechargeable Batteries, NiCad, etc.	pick up only	Free	Free
59	*[1] Urban Environmental Assoc., Inc.	2020 SW 8th Ave., Suite 210	West Linn	(503) 750-2946		Carpet Recycling	pick up only		$.[0 22]/lbs. (Baled)
60	*[7] Battery Solutions, Inc. 48184	38680 Michigan Avenue, Doug Smith	Wayne, MI	(248) 446-3001		Batteries delivered to this processor in Michigan	Pick up only	FOB Michigan	$.[41]/lbs.

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WINDY POINT II WIND ENERGY PROJECT
DECOMMISSIONING PLAN

This Decommissioning Plan for the Windy Point II Wind Energy Project is required by Condition 34 of the Findings of Fact, Conclusions and Decision of the Klickitat County Planning Director (March 19, 2009) ("EOZ Permit"). All decommissioning and restoration activities will be conducted in accordance with this Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity.

1. Decommissioning Timing. EOZ Permit Condition 34 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.

1.1 *Useful Life of the Facility and Events Triggering Decommission.* The Facility is assumed to have a useful life of 30 years. The trend in the wind energy industry has been to "repower" older projects by upgrading existing towers and project infrastructure with more efficient turbines and related equipment. This would extend the useful life to a period far longer than 30 years. The leases with the landowners are for 20 years with possible options for additional lease periods.

The Facility could be terminated under the following circumstances:

- At the end of the lease terms or extended terms.
- At the end of commercial operation of the Facility.
- In the unlikely event of a material breach of lease terms.
- As a result of unknown or unpredictable events, such as governmental condemnation, or natural disasters.

If the Facility is terminated, the permit holder will obtain the necessary authorization to proceed with the Facility decommissioning.

1.2 *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:

- Failure of a turbine or its related equipment where repair or replacement is impractical.
- The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
- Economic impracticability.

If the individual turbines are terminated, permit holder will obtain the necessary authorization to proceed with turbine decommissioning.

2. **Decommissioning Scope.** The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.

2.1 *Method of Decommissioning the Project and Restoring the Project Site.* The method of decommissioning the turbines has five parts:

- Dismantling of turbines, towers, and other above-ground equipment, performing an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;
- Removal of below-ground foundations and components as required in the leases;
- Protect roads within the County from damages beyond usual wear and tear;
- Soil and vegetation reclamation; and
- Removal of Facility roads.

2.1.1 *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment. The tower, equipment in the nacelles, and transformers are expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material will be disposed of at authorized sites.

2.1.2 *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pad used for the transformer will also be removed. This will allow agricultural use of the Facility site after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. In addition, underground cable removal is expected to be more environmentally disturbing than leaving cables in place. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3 *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. The permit holder is responsible for all damage to roads, beyond usual wear and tear. The permit holder shall enter into a road haul agreement with County Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4 *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area is to be reclaimed and will include re-grading to restore soil and original contours and re-vegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

2.1.5 *Removal of Facility roads.* One of the final steps in decommissioning will be removal of Facility roads. Decommissioned roads will be reclaimed to restore the surface grade and soil to a condition useful for either agriculture or wildlife habitat, depending on the use of surrounding lands. Roads also may be left in place based on landowner preference. It is expected that landowners generally will not want the Project to decommission the widened portions of farm roads that pre-existed the Facility, but may want the new access roads built for the Facility decommissioned.

2.1.6 *Method of Decommissioning Individual Turbines and Restoring the Area Containing Decommissioned Turbines.* The first step in the individual turbine decommissioning activities would be to dismantle the turbine, the support tower, and the pad mounted transformer. The tower, much of the equipment in the nacelle, and the pad-mounted transformer is expected to have value and would therefore be removed and sold for use or for scrap. Unsalvageable material would be disposed of at authorized sites. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine would need to remain in place to access the remaining wind turbines for operational maintenance activities.

2.2 *Decommissioning Funding and Security Arrangement.*

2.2.1 *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, the permit holder shall provide financial security ("Decommissioning Security") consistent with the policies set forth in this subsection, and determined acceptable by the Planning Director.

2.2.2 *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3 *Forms of Decommissioning Security.* The permit holder shall provide Decommissioning Security through one of the forms recognized in subsection 2.2.8 below, or through another form approved by the Planning Director as substantially equivalent. Permit holders shall specify and obtain approval of the form of Decommissioning Security in the Decommissioning Plan. Of the five recognized forms of Decommissioning Security listed below, two are based on the financial standing of the permit holder itself, namely the corporate guaranty and the utility ownership. Permit holders that qualify for these forms of Decommissioning Security do so by demonstrating their overall financial stability. The other three, deposit accounts, bonds and letters of credit, are based on separately-established security mechanisms funded by purchase or cash deposits.

2.2.4 *Deadline for Funding Decommissioning Security.* Any project using a bond, letter of credit, or deposit account shall achieve the requisite level of

Decommissioning Security funding no later than a specified date. That date, referred to as the "Security Funding Date," will be identified in the approved plan and will normally be no later than twenty years after the project's commercial operation date. Twenty years is intended to approximate the point when turbines enter the last third of their expected useful lives. It is at that point that separate security becomes appropriate to ensure that project equipment would not be abandoned without full implementation of the Decommissioning Plan.

2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* The Plan shall include a schedule for building up the Decommissioning Security over time so that the full funding is achieved by the Security Funding Date. The permit holder shall begin funding the Decommissioning Security no later than the fifth to seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date.

2.2.6 *Extensions of Security Funding Date.* During project operation, the permit holder may request an extension of the Security Funding Date. The Planning Director may approve an extension if the permit holder demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date. Provision of security earlier than the Security Funding Date is permitted but would not typically be required.

2.2.7 *Credit for Value of Equipment.* To provide the required Decommissioning Security, permit holders using a deposit account, bond or letter of credit may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, bond or letter of credit. This credit shall not be in an amount in excess of 35% of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.

- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap at the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the permit holder to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value

2.2.8 *Generally Recognized Forms of Financial Security. (Any approach proposed by an applicant will require County approval. The County may revise or eliminate these approaches over time).*

- **Performance Bond**. Permit holder shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The County Planning Department shall approve the required bonding levels. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect until the secured decommissioning obligations are satisfied. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a permit violation and default under the Bond provisions.

- **Letter of Credit**. Permit holder shall provide financial security for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated "A" or better by a Rating Service. The County Planning Department shall approve the dollar amount the letter of credit shall be made out for. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. Klickitat County shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the applicant's failure to perform its decommissioning obligations when due.

- **Guaranty**. The permit holder shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (a) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB - or better from Standard and Poor's or (b) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from

Moody's; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000.

- **Deposit or Trust Account**. Permit holder shall create a deposit account for deposit of funds on an annual basis and in an acceptable amount. Alternatively, the permit holder may use a trust account to allow more active management of deposits. If so, the terms of the trust fund shall be subject to approval by the Planning Director and the amounts deposited shall cover the trust's expenses. The conditions of the account and amount of annual deposit shall be approved by the County. Funds shall be available to the County under terms of the deposit or trust account upon failure of permit holder to comply with this plan. Release of the account, or funds within the account, shall be upon approval of the County and permit holder, except as otherwise provided herein.

- **Project Ownership by Public Utility with Rate Collection Authority**. A permit holder that is a legally-recognized public utility with authority to charge rates, or is controlled by such a utility and backed by its credit, , and which demonstrates to the Planning Director's satisfaction that its rate base is adequate to fund the Decommissioning Plan, and is in solid financial standing, may be deemed to have funded its Decommissionmg Security obligation while it maintains such authority, and while it remains in solid financial standing. Such public utility shall confirm it will remain bound by the decommissioning plan, unless and until the County approves an alternative approach to security.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require the permit holder to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.

4. **Windy Point II Project Decommissioning Financial Security and Schedule.** The Windy Point II Project commits to using either a deposit account to provide financial security, or to use the utility ownership method. At the time this Plan is submitted, the project owner anticipates selling all electricity generated by the project to a large municipal utility, which would have an option to purchase the project after approximately five years of project operation. If the municipal utility takes ownership in approximately five years, financial security might be appropriately provided through "Project Ownership by Public Utility with Rate Collection Authority." Thus, the project would provide financial security through either the deposit/trust account or the utility ownership model in accordance with the following schedule.

EOZ Permit Condition 34 contemplates that this Plan include a schedule and funding plan to specify how the security/financial arrangements mechanism will be funded during project

operations. No later than five years after the project commences commercial operation, the project will submit to the County for review and approval detailed documentation necessary to establish a deposit or trust account in accordance with the terms for such accounts outlined above in section 2.2.8, bullet 4. Promptly following the County's approval of such documents, the project will cause them to be executed and ready the account to receive funds. Beginning in the seventh year after commercial operation, the project will fund the account as necessary to secure the projected decommissioning costs. The project-specific estimate for such costs have been provided by the applicant, as specified in Appendix A. However, the County will review and approve updated estimates within five years. These updated estimates must account for inflation during the funding period, and salvage values must be confirmed by an independent third party. However, alternatively, if the project obtains the County's approval to use the "Project Ownership by Public Utility with Rate Collection Authority" mechanism in lieu of the deposit/trust account mechanism, no deposit/trust account mechanism shall be required, and any funds already accumulated in such account (if such approval is granted after funding has begun in year seven) would be returned. This latter approach has not been pre-approved. It is contingent on County approval, based upon factors noted above, the applicant's financial condition, market conditions, and other relevant criteria.

5. **Plan Update.** The County and permit holder may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years, to reflect changing circumstances. The Planning Director may review the Plan and order the permit holder to amend the Plan, without the permit holder's agreement, and outside of this five year period, if:

- there are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit; or
- there is a significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
- there are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

Plan revisions ordered outside of the five year cycle require a minimum of 45 days mailed notice before taking effect. Such orders shall not be issued without consulting with the permit holder, and reviewing any written comment submitted. In ordering the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties the permit holder would face in complying with the Plan revisions. The permit holder may appeal such orders through procedures provided by law.

6. **Conclusion.** Based on the foregoing information, the applicant is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

Appendix A

Cost Estimates for Decommissioning
and
Schedule for Funding Deposit/Trust Account

[Based on 100.7 MW Project Size (Fn 1)]

1. Cost estimates for decommissioning work:

Cost Based Tasks	Quantity		Cost	Total
Removal of turbines, etc. (Fn.2):	110,000	Tons	$ 55.00	$ 6,050,000.00
Extraction of Copper	625	Tons	$ 45.00	$ 28,125.00
Removal of transformer oil	20,000	Gallons	$ 0.75	$ 15,000.00
Disposal non value items (Fn.6)	1,500	Tons	$ 180.00	$ 270,000.00
Foundation removal, etc. (Fn.3):	2,500	Yards	$ 140.00	$ 350,000.00
Site Revegatation (Fn.4):	75	Acres	$ 500.00	$ 37,500.00
Road restoration(Fn.5):	93,000	Feet	$ 6.50	$ 604,500.00
Total Cost				$ 7,355,125.00
Total Cost: Per Turbine	50			$ 147,102.50

Scrap value:

Material	Quantity		Price	Total
Steel	110,000	tons	$ 135.00	$ 14,850,000.00
Copper	625	tons	$ 3,300.00	$ 2,062,500.00
Oil	20,000	Gallons	$ 1.60	$ 32,000.00
Total Revenue				$ 16,944,500.00
Total Revenue Per Turbine	50			$ 338,890.00

Cost vs Revenue ratio: 2.30 : 1

2. Computation of required funds:

Less up to a maximum of 35% of total costs secured by resale/scrap value:

Yields, total decommissioning security amount:

3. Funding schedule (straight line deposit schedule to reach specified amount between years 7 and 20)

Footnotes:

(1) This schedule is based on a project size of 50 turbines. It will be adjusted upwards or downwards based on actual project size prorated on a per turbine basis.
(2) Dismantling of turbines, tower, and other above-ground equipment, not including substations.
(3) Removal of below-ground foundations and components (to below farming level approx 5 ft.)
(4) Vegetation restoration (reseeding as needed)
(5) Restoration of facility roads (discing and planting)
(6) Includes fiber glass from blades and nacelle and other non sellable items

KLICKITAT COUNTY
PLANNING DEPARTMENT
228 W. Main St., MS: CH-17, Goldendale, Washington 98620
VOICE: 509 773-5703 or 1 800 765-7239
FAX: 509 773-6206

August 4, 2010

Brian Walsh
Business Developer
Iberdrola Renewables, Inc
Wind Development - West
1125 NW Couch, Suite 700
Portland, OR 97209

Re: Decommissioning Plan
Juniper Canyon Wind Energy Project (Phase I)

Dear Mr. Walsh,

Thank you for submitting the Decommissioning Plan for our review.

The Plan outlines the circumstances under which individual turbines would be removed from the site, methods used to restore areas previously containing turbines and methods for decommissioning the overall project and restoring the overall site. The Plan also requires financial security to ensure proper decommissioning occurs. It is our understanding that the Juniper Canyon Wind Energy Project (Phase I) commit to provide the security outlined in 2.2.8 to secure the project's decommissioning obligations.

Juniper Canyon (Phase I) attached a decommissioning estimate spreadsheet which provides information on scrap and salvage value, to support Decommissioning Plan approval. Please note that the assumptions made therein are not "approved," but will be considered and approved once the final approach to financial security is determined. Inflation must be accounted for, and salvage values will be re-assessed, based upon market conditions.

No later five (5) years after the project commences commercial operations, submittal and County approval of a revised Plan, including the approach to financial security, is required.

Please regard this letter as approval of the Decommissioning Plan as submitted on July 30, 2010, to address Condition 36 of EOZ2008-02.

Sincerely,

Curt Dreyer
Planning Director

KLICKITAT COUNTY
PLANNING DEPARTMENT
228 W. Main St., MS: CH-17, Goldendale, Washington 98620
VOICE: 509 773-5703 or 1 800 765-7239
FAX: 509 773-6206

September 13, 2010

Brian Walsh
Business Developer
Iberdrola Renewables, Inc
Wind Development - West
1125 NW Couch, Suite 700
Portland, OR 97209

Re: Clarification of Section 2.2.5 of the Juniper Canyon Wind Energy Project (Phase I) Decommissioning Plan

Dear Mr. Walsh,

Pursuant to your request on August 9, this letter serves to clarify the funding schedule of the recently approved Decommissioning Plan for the above referenced project.

Planning Department staff reviewed the earlier drafts and the Model Decommissioning Plan Resolution 04308. Consistent with these documents, the Planning Department agrees to defer the schedule to achieve full funding of decommissioning security to begin in year seven (7). In other words, no later than seven (7) years after the project commences commercial operations, submittal and County approval of a revised Plan, including the approach to financial security, is required.

The following paragraph shall replace Section 2.2.5 of the approved plan. All other provisions as approved on August 4, 2010 remain unchanged.

> 2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* A schedule for building up the Decommissioning Security over time, which accounts for inflation, so that full funding is achieved by the Security Funding Date will be finalized and approved by the Planning Department before the ~~fifth~~ seventh anniversary of the project's commercial operation date. Developer shall begin funding the Decommissioning Security no later than the ~~fifth~~ seventh anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date. The attached decommissioning cost estimates shall be updated and approved by the Department before the ~~fifth~~ seventh anniversary of the project's commercial operation date.

Sincerely,

Curt Dreyer
Planning Director

JUNIPER CANYON WIND PROJECT (Phase I)
DECOMMISSIONING PLAN

This Decommissioning Plan for the Juniper Canyon Wind Project, owned and operated by Juniper Canyon Wind Power LLC ("Developer") is required by EOZ2008-02. All decommissioning and restoration activities will be conducted in accordance with this Decommissioning Plan, and consistent with applicable local, state, and federal regulatory requirements that exist at the time of the decommissioning activity. Within eighteen (18) months or other reasonable time period as may be determined by the Planning Department of the termination or abandonment of the Juniper Canyon Wind Project by Developer, Developer shall be required to complete Juniper Canyon Wind Project decommissioning in accordance with this Decommissioning Plan.

1. Decommissioning Timing. CUP 2004-11 requires the Decommissioning Plan to outline the circumstances under which the overall project will be terminated and under which individual turbines will be removed from the site.

1.1 *Useful Life of the Facility and Events Triggering Decommission.* The Facility is assumed to have a useful life of 30 years. The leases with the participating landowners are for 30 operational years with possible options for additional lease periods beyond the initial 30 operational years. The Facility could be terminated under the following circumstances:

- At the end of the lease terms or extended terms, or upon termination of the lease(s)/Facility by Developer, at Developer's sole discretion.
- At the end of commercial operation of the Facility.
- In the event of a material breach of lease terms by Developer for all participating landowners which is not cured within the prescribed time period.
- As a result of unknown or unpredictable events, such as governmental condemnation, or natural disasters.

If the Facility is terminated, Developer will obtain the necessary authorization to proceed with the Facility decommissioning consistent with this Plan.

1.2 *Events Leading to Removal of Individual Turbines.* Individual turbines could be terminated under the following circumstances:

- Failure of a turbine or its related equipment where repair or replacement is impractical.
- The individual turbine has been deemed to have affected the wildlife population beyond acceptable levels.
- Economic impracticability or removal of turbines at Developer's sole discretion.

If the individual turbines are terminated, Developer will obtain the necessary authorization to proceed with turbine decommissioning consistent with this Plan.

2. Decommissioning Scope. The Permit requires the Decommissioning Plan to outline the methods that will be used to restore the entire project site and to restore areas previously containing turbines.

2.1 *Method of Decommissioning the Project and Restoring the Project Site.* The method of decommissioning the turbines has five parts:

- Mobilize cranes to the site for each wind turbine; dismantling of turbines, towers, and other above-ground equipment, make commercially reasonable efforts to perform an assessment of reuse or recycling of equipment and materials, to ensure that material and equipment that can be used economically is recycled or reused rather than just disposed of;
- Removal of below-ground foundations and components as required under the terms of the leases;
- Protect roads within the County from damages which arise from decommissioning activities beyond usual wear and tear;
- Soil and vegetation reclamation to restore the soil surface to a condition reasonably similar to its original condition; and
- Removal of Facility roads unless property owners desire to keep such roads.

2.1.1 *Dismantling of turbines, tower, and other above-ground equipment.* The first step in the decommissioning activities is to dismantle all turbine, tower, pad-mounted transformers, met towers, and other above-ground equipment and make reasonable commercial efforts to reuse or salvage materials as may be determined by Developer.

2.1.2 *Removal of below-ground foundations and components.* Subsequent steps in decommissioning include removal of concrete turbine foundations to a minimum depth of three feet below grade and soils restoration. The pads used for the individual turbine transformers will also be removed. This will allow use of the property after decommissioning. The leases contemplate that the underground collector cables will be left in place as they will be situated three feet below grade and will not interfere with agricultural use of the properties. The soil surface will be restored as close as reasonably possible to its original condition.

2.1.3 *County Roads.* Dismantling and removing turbines from the site has the potential to damage County roads. Developer is responsible for all damage to roads, beyond usual wear and tear. Developer may be required to enter into a road haul agreement with the County's Department of Public Works. The agreement should be consistent with standard County road haul agreements for wind development projects while accounting for unique project conditions and shall provide for a designated haul route and bonding.

2.1.4 *Soil and vegetation reclamation.* Reclamation procedures will be based on site-specific requirements and techniques commonly employed at the time the area is

to be reclaimed and will include re-grading to restore soil and original contours and re-vegetation of all disturbed areas with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands.

2.1.5 *Removal of Facility Roads.* One of the final steps in decommissioning will be removal of Facility roads. Decommissioned roads will be reclaimed to restore the surface grade and soil to a condition useful for either agriculture or wildlife habitat, depending on the use of surrounding lands. Roads also may be left in place based on landowner preference. It is expected that landowners generally will not want the Project to decommission the widened portions of farm roads that pre-existed the Facility, but may want the new access roads built for the Facility decommissioned.

2.1.6 *Method of Decommissioning Individual Turbines and Restoring the Area Containing Decommissioned Turbines.* The first step in the individual turbine decommissioning activities would be to dismantle the turbine, the support tower, and the pad mounted transformer and make reasonable commercial efforts to reuse or salvage materials as may be determined by Developer. The top three feet of the affected turbine foundation and the transformer pad would then be removed and the soils will be restored. The road accessing the removed turbine may need to remain in place to access the remaining wind turbines for operational and maintenance related activities.

2.2 *Decommissioning Funding and Security Arrangement.*

2.2.1 *Decommissioning Security.* To ensure proper turbine decommissioning, consistent with this Plan, Developer shall provide financial security ("Decommissioning Security") as set forth below. Following County approval of decommissioning completion consistent with the Plan, the Developer may reduce, return or eliminate the Decommissioning Security. For purposes of the Plan, "completion" means the Planning Director has reasonably determined that decommissioning has been performed in accordance with the Plan, permit, and code requirements.

2.2.2 *Purpose of the Decommissioning Security.* The Decommissioning Security shall be planned and funded to secure the costs of implementing the decommissioning activities set forth in the Decommissioning Plan.

2.2.3 *Forms of Decommissioning Security.* The Developer shall provide Decommissioning Security as set forth in 2.2.8 below.

2.2.4 *Deadline for Funding Decommissioning Security.* If a bond, letter of credit, or deposit account is used the Project shall achieve the requisite level of Decommissioning Security funding by a date certain. That date, referred to as the "Security Funding Date," is 20 years from the Project's first day of commercial operation.

2.2.5 *Schedule to Achieve Full Funding of Decommissioning Security.* A schedule for building up the Decommissioning Security over time, which accounts for inflation, so that full funding is achieved by the Security Funding Date will be finalized and approved by the Planning Department before the fifth anniversary of the project's commercial operation date. Developer shall begin funding the Decommissioning Security no later than the fifth anniversary of the project's commercial operation date, and shall ensure that the security level is increased annually on a straight-line basis until the full Decommissioning Security amount is provided at the Security Funding Date. The attached decommissioning cost estimates shall be updated and approved by the Department before the fifth anniversary of the project's commercial operation date.

2.2.6 *Extensions of Security Funding Date.* During project operation, Developer may request an extension of the Security Funding Date. The Planning Director may approve an extension if the Developer demonstrates to the Planning Director's satisfaction that the useful lives of project turbines will be longer than initially estimated, for example, due to advances in turbine technology or due to a project's turbine refurbishment or replacement. The Security Funding Date can also be extended, with Planning Director approval, based on other demonstrations of the project's ability to produce income over the relevant time, for example, if the project enters a new power purchase agreement extending beyond the Security Funding Date.

2.2.7 *Credit for Value of Equipment.* To provide the required Decommissioning Security, should the Project use a deposit account, guaranty from an investment rated company, performance bond, or letter of credit the Project may include the estimated fair market value of the project's equipment, thereby reducing the amount of security to be provided by the deposit account, performance bond, or letter of credit. This credit shall not be in an amount in excess of thirty-five percent (35%) of total estimated decommissioning costs. Estimated fair market value of project equipment, for either resale or scrap, would typically be accounted for using the following valuation formulas, unless otherwise approved by the Planning Director:

- Market value of project equipment if sold for reuse: credit given for the equipment's estimated resale fair market value if sold for reuse at the Security Funding Date.

- Estimated scrap value of project equipment: credit given for the equipment's estimated fair market value as scrap at the Security Funding Date. This would be an alternative to the market value demonstration.

The purpose of the limited credit is to allow the Developer to account for the project's value in satisfying the Decommissioning Security requirement, but doing so in a way that guards against under-securing decommissioning due to fluctuations in market prices or errors in estimating fair market value. An updated scrap value estimate shall be provided and approved by the Planning Department before the fifth anniversary of the project's commercial operation date.

2.2.8 *Recognized Forms of Financial Security.* Security shall be provided by the Developer no later than the fifth anniversary of the Project's commercial operation date. Financial security may include each of the following, or a combination thereof, as the County may determine, and shall be substantially consistent with the County's model decommissioning plan, except that Developer may request a "parent company guaranty" as provided below:

- Deposit or Trust Account. The Developer has not proposed a deposit or trust account, but may request County approval of this approach in future.
- Performance Bond. The Developer has not proposed a performance bond, but may request County approval of this approach in future.
- Letter of Credit. The Developer has not proposed a letter of credit, but may request County approval of this approach in future.
- Guaranty. At the request of Developer, the County may consider, as one or more of the forms of financial security, a secured guaranty from an independent third party. Also, the developer has requested County approval of a guaranty from its parent company. Upon review of audited financial statements prepared by nationally-recognized, independent auditors selected by the County, and at Developer's sole cost and expense, the County may consider for acceptance a secured guaranty from Iberdrola Renewables Holdings, Inc., or an affiliate of Developer. If accepted, the County may elect to limit this form of security to a limited portion of total decommissioning costs (i.e., 15% for every $100,000,000 of equity in the company).

  Any guarantor must demonstrate to the County's satisfaction such guarantor's current and continuing financial viability throughout the decommissioning period by demonstrating a Credit Rating of (a) BBB- or better from Standard and Poor's; or (b) Baa3 or better from Moodys; or (c) having audited financial statements prepared by a nationally-recognized firm of independent auditors indicating a net worth in excess of $100,000,000. If the "parent-company" guarantor approach is used (as addressed in the preceding paragraph), guarantor shall demonstrate continuing financial viability consistent with the preceding paragraph (i.e. maintenance of $100,000,000 equity for each 15% of decommissioning costs).

  The Developer shall provide the County with copies of its most recent financial statements upon request, and Iberdrola Renewables Holdings, Inc. or an affiliate of the Developer will notify the County if at any time during the Decommissioning Period that its financial standing falls below the Credit Ratings/identified equity minimums listed above. If this shall occur, the County shall have the ability to require the Developer to provide any of the other approved forms of security outlined in this

agreement for the outstanding amount of security within 60 days of notice from the County.

3. **Execution of Decommissioning Plan by County.** Should the Facility be terminated as outlined in section (1) above; or otherwise abandoned, no longer maintained or operated, or have ended its useful commercial life, the County may require Developer to implement the Decommissioning Plan, and to use the Decommissioning Security for that purpose. The County has comparable discretion with regard to individual turbines.

4. **Plan Update.** The County and Developer may agree to amend the Plan at any time. If warranted, the County may require Plan update and amendment every five years, to reflect changing circumstances. The County may review and amend the Plan without the Developer's agreement, and outside of this five year period, if:

- There are significant market fluctuations or market uncertainties which have already or are likely to significantly reduce or eliminate the value of the limited credit (i.e., salvage value); or
- There is a significant change in the financial position of the applicant, or in the value of the security itself, which has or is likely to significantly reduce the value of the security provided; or
- There are significant changes in the analysis supporting the original security arrangements, which significantly increase the risk to the County that decommissioning will not be performed as required.

Plan revisions made outside of the five year cycle require a minimum of 45 days mailed notice to Developer before being finalized and approved. Such revisions shall not be made without consulting with Developer, and reviewing any written comment submitted. In making the revisions, the County shall consider the factual issues relevant to the criteria listed above; and consider factors relevant to any difficulties Developer would face in complying with the Plan revisions.

5. **Conclusion.** Based on the foregoing information, Developer is confident that the Facility can be decommissioned and the Facility site restored to a useful non-hazardous condition that allows continued use for agriculture, grazing or wildlife habitat.

Juniper Canyon - DECOMMISSIONING ESTIMATE (based on EFSC independent engineer methodology)
Date: 09/17/09
Author: Tervo

Description	Quantity	Unit	Unit Cost	Extension
Turbines				
Disconnect electrical and ready for disassembly	63	WTG	$ 1,009.00	$ 63,567
Remove turbine hubs and blades	63	WTG	$ 3,949.00	$ 248,787
Remove turbine nacelles and towers	13860	TN	$ 72.81	$ 1,009,147
Remove and load pad-mounted transformers	63	WTG	$ 2,319.00	$ 146,097
Remove tower foundations	1890	CY	$ 36.23	$ 68,475
Restore turbine turnouts	63	WTG	$ 98.00	$ 6,174
Met Towers				
Dismantle and dispose of met towers	2	EA	$ 8,329.00	$ 16,658
Substations and Field Workshops				
Dismantle and dispose of substations	1	EA	$ 62,098.00	$ 62,098
Dismantle and dispose of O&M facility	1	EA	$ 28,387.00	$ 28,387
Transmission Line				
Remove 230-kV single-circuit transmission line	19.5	MILE	$ 65,900.00	$ 1,285,050
Remove 230-kV double-circuit transmission line	0	MILE	$ 66,420.00	$ -
Remove 34.5-kV single-circuit transmission line	1.5	MILE	$ 5,613.00	$ 8,420
Remove understrung 34.5-kV single-circuit transmission line	0	MILE	$ 817.00	$ -
Remove understrung 34.5-kV double-circuit transmission	0	MILE	$ 1,430.00	$ -
Remove junction boxes & electrical to 4' below grade	4	EA	$ 1,362.00	$ 5,448
Access Roads				
Remove roads, grade and seed	18	MILE	$ 18,895.00	$ 340,110
Restore Additional Areas Disturbed by Facility Removal				
Around turbine pads and turnouts	5	AC	$ 5,760.00	$ 28,800
Turbine disassembly crane and truck areas	5	AC	$ 5,760.00	$ 28,800
Turbine disassembly laydown area	5	AC	$ 2,861.00	$ 14,305
Around met towers	1	AC	$ 5,760.00	$ 5,760
Around substations	3	AC	$ 5,760.00	$ 17,280
Around O&M facility	2	AC	$ 5,760.00	$ 11,520
Around 34.5-kV power line poles	1	AC	$ 2,861.00	$ 2,861
Around 230-kV power line supports	8	AC	$ 2,861.00	$ 22,888
Around access roads	22	AC	$ 5,760.00	$ 126,720
General Costs				
Permits, mobilization, engineering, overhead, utility disconnects	1	LS	$350,000.00	$ 350,000
Subtotal				**$ 3,897,351**
Performance Bond	1%			$ 38,974
Gross Cost				**$ 3,936,324**
Administration and Project Management	10%			$ 393,632
Future Developments Contingency	10%			$ 393,632
Total Site Restoration Cost			**Total site restoration with no salvage**	**$ 4,723,589**
			Average cost per turbine with no salvage	**$ 74,978**
Salvage Costs				
Steel scrap value (turbines only)	13860	TN	$ (245.00)	$ (3,395,700)
Copper scrap value	1200	TN	$ (3,860.00)	$ (4,632,000)
Oil salvage value	10000	Gal	$ (1.60)	$ (16,000)
			Net salvage value	**$ (8,043,700)**
			Net cost / (Revenue) from removing wind plant	$ (3,320,111)

02/14/2012 17:29 FAX

Petition for Setbacks in Wasco County

I am a resident of Wasco County and request that the Wasco County Board of Commissioners adopt reasonable wind turbine setback distances. I support 1,320-foot wind turbine setbacks from rural residences and a 3,520-foot setback non-resource boundaries. I also support authorizing the County to approve adjustments for lesser setbacks on a project-by-project basis. I think this is fair and safe.

#	Date	Name	Signature	Address/Email
1	2-10-12	Jeanne Carver	Jeanne Carver	92462 Hinton Rd. Maupin, OR 97037
2	2-12-12	DAN CARVER	Dan Carver	92462 HINTON RD. MAUPIN, OR 97037
3	2-12-12	Laurie Mathes	Laurie Mathes	Box 101, Antelope, OR 97001
4	2-12-12	Don Gomes, Jr	[illegible]	PO Box 70 Antelope OR 97001
5	2-12-12	Don Hore	Don Hore	PO Box 103 Antelope OR 97001
6	2-12-12	Maryann Hore	Maryann Hore	PO Box 103 Antelope OR 97001
7	2-12-12	Earline Matson	Earline Matson	5362 Hartley Rd The Dalles, OR 97058
8	2-12-12	Judy Obert Bayley	Judy Obert Bayley Property in Wasco County	6331 S.W. Radcliff St. Portland, OR.

002/003

02/14/2012 17:28 FAX

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2-8	Blaine CARVER	Blaine Carver	91443 Hinton Rd. Maupin, OR
2	2-8	Ben Moses	Ben Moses	92470 Hinton Rd Maupin, OR 97037
3	2-8	LACEY MORIN	Lacey Morin	92771 Hinton Rd Maupin OR 97037
4	2-9	SCOTT CAMERON	Scott Cameron	92775 Hinton Rd Maupin OR 97037
5	2-9	Lewis/Laura Morin	Laura Morin	92771 Hinton Rd Maupin OR 97037
6	2-9	JOSEPH DIFF	Joseph Diff	92661 Hinton Rd Maupin OR 97037
7	2-9	KAREN KING	Karen King	92661 Hinton Rd. Maupin OR 97037
8	2-9	Tracy Cameron	Tracy Cameron	92775 Hinton Rd Maupin OR 97037
9	2-13	Floyde Forman	Floyde Forman	PO Box 319 Antelope, OR 97001
9	2-13	Thomas E Sonnichsen		PO Box 65 Shaniko OR 97057
2	13-02	Sylvia M COX	Sylvia M. Cox	PO Box 65 Shaniko Or. 97057
12	2-13	Rhonda Pearce	Rhonda Pearce	Box 374 Maupin OR 97037
13	2.14.12	Leah Fritz	Leah Fritz	92829 Hwy 216 Tygh Valley OR 97063
14	2-13-12	Keelia Carver	Keelia Carver	91443 Hinton Rd Maupin OR 97037

003/003

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2/13/12	Brad Chase	Brad Chase	9117 Bakeoven Rd., Maupin OR 97037

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#	Date	Name	Signature	Address/Email
1	2/10/2012	Donn W Phillips	Donn W Phillips	90806 W. Larson Rd / dxp1516@Gmail.com
2	2/10/2012	Patricia A Phillips	Patricia A. Phillips	90806 W. Larson Rd / dxp1516@Gmail.com

(44)

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2-9-12	Frank J. Kay, III.	Frank J. Kay, III	PO Box 65 Maupin, OR 97037
2	2-10-12	JOE RINGO	Joe Ringo	PO Box 341 MAUPIN, OR 97037
3	2-10-12	RANDY BECHTOL	Randy Bechtol	PO Box 368 Maupin OR 97037
4	2-10-12	MIKE FOREAKER		PO Box 280 Maupin OR 97037
5	2-10-12	Susan Kay	Susan Kay	PO Box 65 Maupin OR 97037
6	2-15-12	MICKEY PETERSON		P.O Box 39 MAUPIN OR 97037
7	2-15-12	MARCIA LEWIS		80736 Shadybrook Tygh Valley OR 97063

(56)

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2/13	Hugh Holbrook	Hugh L Holbrook	P.O. Box 135 Shaniko OR. 97057
2	2/13	Shirley STEVENS	Shirley Stevens	P.O. Box 2 Shaniko
3	2/13/12	Renner Wright	Renner L. Wright	P.O. Box 54 Shaniko 97057
4	2/13/12	Goldie Lee Roberts	Goldie Lee Roberts	P.O. Box 96 Shaniko, oreg. 97057
5	2/13/12	RICK REESLAND	Rick Reesland	P.O Box 429 THE DALLES OR.
6	2/13/12	Linus Kegel	Linus Kegel	P.O. Box Shaniko, Ore.
7	2-13-12	Alex Espy	Alex Espy	P.O. Box 135 Shaniko OR 97057
8		Don Treanor	PO Box 146	SHANIKO ORE 97057
9		Jessie Owens	Jessie Owens	POX 64 SHANIKO 97057
10	2/13-12	MARY J. TREANOR	Mary J. Treanor	PO Box 146 - Shaniko OR 97057
11	2/14/12	Richard h. Roberts	Richard h. Roberts	P.O. Box 96 Shaniko, oreg. 97057
12	2/14/12	Laura E Carter	Laura E Carter	PO Box 64 Antelope OR 97001

(69)

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2/9/12	Susie Miles	Susan R. Miles	91171 Bakeoven Rd Maupin / susie@deschutesriver.com
2	2/10/12	Thomas Crawfis		199 2nd St. Maupin Ore / unclefoe@deschutesriver.com
3	2/10/12	Pamela Nelson		308 Bluerock Rd maupin OR pamela@deschutesriver.com
4	2/10/12	Robert Krein		89881 Bakeoven Rd maupin / Krein consulting @ yahoo.
5	2/10/12	MARLIN SCHAEFER		125 NE 4th St. DUFUR OR webmaster@curlyk.com
6	2-15-12	Beth Ashley		611 Elrod St. maupin OR BethEAshley@yahoo.com
7	2-15-12	Michael Ward		611 Elrod st maupin OR
8	2-15-12	Eddi Ingram		105 Corcoran Ave Maupin
9	2-15-12	Aubrey Windom		660 Water Ave
10	2-15-12	Kirk Shields		1409 HWY 197 - Maupin
11	2-15-12	Thomas Trovinger		521 Highway 197 S - Maupin
12		Steve Ashley		89881 Bakeoven Rd Maupin OR 970
13	2/15/12	Mike Keller		WP 6 218

(72)

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2/13/12	Heriberto Menado	Heriberto Menado	1820 E 10th The DALLES OR 97058
2	2/13/12	David Iverson	David Iverson	79586 Dodson Rd Wamic
3	2-13-12	Sandra Anderson	Sandra Anderson	78980 Dekleon Rd. Wamic 97063
4				
5				
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8				

(83)

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2-8-12	George L Barnett	George L Barnett	305 Dufur Ave, Maupin, Oregon
2	2/9/12	VICKI Ashley	Vicki Ashley	90530 Bakeoven Rd. Maupin OR.
3	2/9/12	harry Ashley	Harry Ashley	90530 Bakeoven Rd Maupin Or
4	2/13/12	Stephen H Anderson	Stephen H Anderson	78880 Dabson Rd Wamic Or
5	2/13/12	JAMES E. MCNAMEE	James E McNamee	7600 BAKEOVEN RD. MAUPIN, OR
6	2/13/12	JOHN W PIERCE	John W Pierce	77751 HWY 216 MAUPIN, OR.
7	2/13/12	michael J miles sr.	Michael J Miles	PO. BOX 205 maupin OR. 97037 citymanager26@yahoo.com
8	2/13/12	DENNIS D. ROSS	Dennis D. Ross	P.O. Box 189 MAUPIN, OR 97037 dross@maupin@centurytel.net
9	2/13/12	Richard A Lindley	Richard A Lindley	PO. Box 67 Tygh Valley, OR 97063
10	2/13/2012	Jewa W Dill	Jewa W Dill	90806 Wilson Rd maupin OR 97037
11	2/14/12	Monica McNamee	Monica McNamee	7600 Bakeoven Rd MaupinOR97037

Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2-10-12	Rowann T. Jackson	Rowann T. Jackson	302 2nd St. Maupin, OR 97037
2	2-15-12	Robert Miles	Robert Miles	91171 Bakeoven Rd. Maupin, OR robmiles72@gmail.com

Petition for Setbacks in Wasco County

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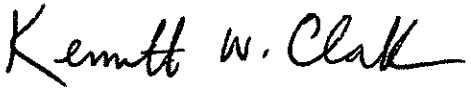
#	Date	Name	Signature	Address/Email
1	2/14/12	Kenneth W. Clark		**Property Address:** 91301 Bakeoven Road Maupin, Or **Mailing Address:** 9655 SE 36th St., Suite 100 Mercer Island, WA 98040 **Email:** clarkkwc01@msn.com
2	2/14/12	Julie A. Clark		**Property Address:** 91301 Bakeoven Road Maupin, OR **Mailing Address:** 9655 SE 36th St., Suite 100 Mercer Island, WA 98040 **Email:** clarkja01@gmail.com
3	2/14/12	Austin C. Clark		**Property Address:** 91301 Bakeoven Road Maupin, OR **Mailing Address:** 9655 SE 36th St., Suite 100 Mercer Island, WA 98040 **Email:** clarkau@live.com

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Petition for Setbacks in Wasco County

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#	Date	Name	Signature	Address/Email
1	2-13-12	Nancy McCarthy	Nancy McCarthy	
2	2-13-12	Brian Harvey	Brian Harvey	
3	2-13-12	Gary R. Harvey	Gary R. Harvey	84033 Hwy 216 Tygh Valley, OR 97063
4	2-13-12	Jo A. Harvey	Jo A. Harvey	84033 Hy. 216 Tygh Valley, OR. 97063
5	2-13-12	Lavon Rockford	Lavon Rockford	120 NE Klinger St. Dufur OR 97021
6	2-13-12	Jessie Rogers	Jessie Rogers	10 Klinger Dufur, OR 97021
7	2-13-12	Charla Kozelisky	Charla Kozelisky	191 Vandorpool Dufur, OR 97021
8	2-13-12	Christy Harman	Christy Harman	770 2nd St. Dufur OR 97021
9	2-13-12	Conner Fissell	Conner Fissell	80258 South Valley Road
10	2-13-12	Molly Simer	Molly Simer	83490 HWY 216 Tygh Valley, OR 97063
11	2-13-12	Gunner Lamb	Gunner Lamb	617 W. 12th St The Dalles, OR 97058
12	2-13-12	Shawna Hammer	Shawna Hammer	225 NE 4th ST Dufur OR 97021

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Petition for Setbacks in Wasco County

I am a resident of Wasco County and request that the Wasco County Board of Commissioners adopt reasonable wind turbine setback distances. I support 1,320-foot wind turbine setbacks from rural residences and a 3,520-foot setback non-resource boundaries. I also support authorizing the County to approve adjustments for lesser setbacks on a project-by-project basis. I think this is fair and safe.

#	Date	Name	Signature	Address/Email
1	2/13/12	Kristy Beauchamp	Kristy Beauchamp	100 NE 1st St, Dufur, OR 97021
2	2/13/12	Vicky Hoelscher	Vicky Hoelscher	607 Slusher Ave, Maupin, OR. 97037
3		JOHN HOWARD	[illegible]	304 DUFUR ST 97037
4		GWEN HOWARD	[illegible]	304 Dufur St 97037
5	2/14/12	Bob Gustafson	[illegible]	91604 Fairground Rd Tygh Valley 97063
6	2/14/12	Kelsey Barnett	[illegible]	P.O. Box 514 308 Dufur St Maupin Or 97037
7	2/14/12	Marjorie Gustafson	[illegible]	91604 Fairground Rd Tygh Valley
8	2/14/12	JEFF ONEAL	[illegible]	P.O. Box 162 MAUPIN, OR, 97037
9	2/14/12	JAMES S. BURGETT	[illegible]	PO Box 4 Maupin, OR 97037
10	2/14/12	DAVID E. DULING	[illegible]	57892 N P ROAD MAUPIN OR 97037

March 20, 2012

Honorable Commissioners thank you for the opportunity to testify and for your diligent, attentive work on thoroughly considering the ordinances before us today.

My introduction to county energy ordinances began in 2003 when a commercial wind facility was proposed on Sevenmile Hill. I was shocked that such a facility would even be contemplated in such a site. At that time, I knew next to nothing of Land Use and Development Ordinances. In the next several years, I became thoroughly acquainted with WCLUDO. These ordinances were woefully inadequate to address wind development. They opened the door for unwise consideration of improperly sited wind facilities. They threw us all into turmoil and resulted in the wasteful use of finances and personnel in costly appeals all the way to the state supreme court. The planning department wisely decided to throw these out and do a total rewrite of Chapter 19.

When asked to be a member of the Commercial Energy Advisory Group rewriting this ordinance, I wholeheartedly accepted, thinking I could be a part of a good process that would help the county as a whole. As you know this group was composed of people from every sector. I personally spent scores of hours in monthly meetings for over a year and 100's of hours pouring over ordinances from several counties and States.

I believe the proposed ordinance before us today is very good in most places. The setback of one mile from boundaries of non-resource zones appears to be good and serves all people and developers well. The setbacks proposed in resource zones needs a slight adjustment to make them good and serving for all parties. I repeat the proposed wording I previously submitted online:

Section 19.030 D. 1. c. (3) Setbacks. Resource Zone Dwellings.
"Wind turbines shall be setback a minimum of 1.5 miles from all resource zone approved dwellings utilized as permanent residence for individuals and families. If it is deemed that a particular project requires ~~waivers~~ adjustment provision in order to be viable, such ~~waivers~~ adjustment provision may be requested."

It is totally possible to write acceptable language for ~~waivers~~ adjustment provision in the setback portion of these ordinances, and it will not be a difficult task to acquire such ~~waivers~~ adjustment provision to make a project viable. I believe this proposal will satisfy lessees, make the ordinance clear as to where development is responsible and protect land and residents for decades to come. It is a reasonable, sustainable, and durable way forward that will satisfy all parties and protect us all from wasting time and finances in costly appeals.

There are no State ordinances or ordinances in any county in the State addressing the important issue of the cumulative effect of multiple energy projects. I believe a 1.5 mile setback helps address this issue in a practical way while still allowing appropriate development.

I call your attention once again to the petition I submitted in my online comments. Note that I inadvertently failed to submit page 10. I submit this now. You have read these comments so I do not need to repeat them now. I do ask however, that you imagine these 181 people standing here before you today requesting a 1.5 mile setback.

Thank you for the opportunity to testify and for your kind attention to these comments.

Respectfully,
Gary Casady

Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	1-12-12	JEFF LEONARD		1150 STATE RD MOSIER OR
2	1/16/12	Arcelia Padilla		4109 Chenowith RD #A-37 The Dalles OR 97058
3	1/16/12	Nataly Cervantes		1410 Chenowith rd sp A36 The Dalles OR 97058
4	1/16/12	Bekah Stuart		1410 Chenowith Rd sp A35 TD OR 97058
5	1/17/12	Melinda Lopez		4109 Chenowith Rd SP A 33 the dalles 97058
6	1/17/12	Beverly J. Jansen		"
7	1/16/12	Reva E. Nickell		4109 Chenoweth Rd B 13 The Dalles Or.
8	1/16/12	Patricia Sexton	Patricia Sexton	4109 Chenowith RD, The Dalles
9	1/16/12	Sharon Kahler		4109 Chenowith Rd The Dalles, OR
10	1/16/12	[illegible]		A-22
11	1-16-12	Michelle McBride		4109 Chenowith Rd Sp # B-8 The Dalles, OR 97058
12	1-16-12	Bill McBride		4109 Chenowith Rd SP # B-8 The Dalles OR
13	1-16-12	Marilyn Fizzell		4109 Chenowith B-4
14	1-16-12	Garth Miller		1219 E. 11th; The Dalles, OR 97058
15	1/16/12	Claire Miller		1219 E 11th St The Dalles, OR 97058
16	1/16/12	Tawnee Meeks		933 E 18th The Dalles, OR 97058
17	1/16/12	Margaret Casady	MARGARET CASADY	732 E 19TH ST. THE DALLES, OR 97058
18	1/16/12	Robin Steward		618 E. 20th St. The Dalles OR 97058
19	1/16/12	Kelly Steward		618 E 20 St The Dalles OR 97058
20	1/16/12	Arlene Neumayer		716 E. 20th St. The Dalles, OR 97058
21	1/16/12	Jessaka Shroy		4109 Chenowith rd B-4 The Dalles 97058
22	1/16/12	DON FRY		6745 7 Mt. Hill RD W.
23	1/16/12	David Wilson		7100 7 mile Hill Rd.
24	1/16/12	Jolene Wilson		7000 7 mile Hill Rd
25	1/17/12	Robert L. Middleton		1821 MONTANA The Dalles OR 97058

Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	11-12-	George Kochis	George Kochis	1911 Starlight The Dalles OR 97058
2	11-20	Curt McConnell	Curt McConnell	4408 Lockwood The Dalles OR 97058
3	11-20	David J. Kinser	David J. Kinser	2601 E. 14th St. T.D. 97058
4	11-20	Marilyn L. Kinser	Marilyn L. Kinser	2601 E. 14th St The Dalles, OR 97058
5	12/17		KAREN SWEDEN	2012 LONELY LN MOSIER, OR 97040
6	12/17	LARRY SWEDEN		2012 LONELY LN MOSIER OR 97040
7	12/17	Joella Bullock	Joella Bullock	6575 Murton Rd. The Dalles 97058
8	12/17	Cheryl Wesolowski	Cheryl Wesolowski	2013 Lonely Ln, Mosier, OR 97040
9	12/17	Tom Reid	Tom Reid	2015 Lonely Lane Mosier, OR 97040 tom@greenhome-construction.com
10	12/17	Keith Wesolowski		2013 Lonely Ln Mosier OR 97040 cherylnkeith@embarqmail.com
11	12/17	Steve Castles	Steven Castles	2011 Lonely Ln, Mosier OR 97040 sheastles@embarqmail.com
12	12/17	Elaine Castles	Elaine A Castles	2011 Lonely Lane, Mosier, OR 97040
13	1/14/12	JEROME LONGAWA	Jerome Longawa	2465 BADGER View DR. The Dalles OR. 97058
14	1/14/12	Elba Longawa	Elba Longawa	2465 Badger View Dr. The Dalles OR 97058
15	1/14/12	JAMES YUHAS	James M Yuhas	6675 MURTON RD THE DALLES, OR 97058
16	1/14/12	Frances M Yuhas	Frances M Yuhas	6675
17	1/15/12	Jack Hay	Jack Hay	1455 Emerson Loop Rd The Dalles, 97058
18	1/15/12	Margaret Brewer		6124 Roberts Mill Rd. The Dalles 97058
19	1/16/12	Sabrina Rogers		6555 Seven mile Hill Rd. The Dalles OR 97058
20	1/16/12	C O & J Rogers		6555 Seven mile Hill Rd The Dalles OR 97058
21	1/16/12	Oliver L. Sexton	Oliver L. Sexton	4109 Chenowith Rd #A-37 The Dalles OR 97058
22	1/16/12	HIIAN M ROSS		4109 Chenowith Rd #A-37 The Dalles OR 97058
23	1-16-12	John Herron	John Herron	703 Lincoln St The Dalles OR 97058
24	1-16-12	Mike Singhurst		4109 Chenowith Rd #A-37 The Dalles OR 97058
25	1-16-12	Suzanne Mantel	Suzanne Mantel	4109 Chenowith Rd #A-37 The Dalles OR 97058

Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	8/23/11	GARY CASADY	Gary J Casady	2500 Badger View Dr. The Dalles OR 97058
2	8/24/11	Marta von Borstel	Marta von Borstel	1603 Morton The Dalles OR 97058
3	8-23-11	DWIGHT EVANS	L Dwight Evans	2060 RIDGE RD THE DALLES OR 97058
4	8-23-11	Wilma Evans	Wilma Evans	2060 Ridge Rd The Dalles, Or 97058
5	8-23-11	Barbara Nagel	Barbara Nagel	2455 Badger View Dr, The Dalles, 97058
6	8/24/11	JAMES L. LOSDELL	James L. Losdell	2425 MTN VIEW DR THE DALLES, 97058
7	8/24/11	CHERYL L. ROBERTS	Cheryl L Roberts	2433 BADGER VIEW DR THE DALLES, 97058
8	8/24/11	LLOYD O. ROBERTS	Lloyd O Roberts	2433 Badger View Dr. THE DALLES 97058
9	8/24/11	Garth S. Miller	Garth S. Miller	1219 E. 11th The Dalles, OR 97058
10	8/25/11	Kristy Smith	Kristy Smith	751 Lee St The Dalles, Or 97058
11	10/30/11	Enrico Semadeni	E Semadeni	Ashwood OR.
12	11-11-11	Margaret Stovall	Margaret Stovall	4233 Chenowith Rd. The Dalles OR 97058
13	11-11-11	Sandra Brown	Sandra Brown	1021 W. Murray, The Dalles OR. 97058
14	11-11-11	Peggy Wilcox	Peggy Wilcox	1049 Murray Dr
15	11-11-11	Melissa Zeigler	Melissa Zeigler	1173 Murray DR. W
16	11-11-11	Andrea Rocha	Andrea Rocha	1177 Murray DR W
17	11-11-11	Miguel Rocha	Miguel Rocha	1177 murray Dr W
18	11-11-11	CAROL BARNUM	Carol E Barnum	4701 NW Dr The Dalles OR 97058
19	11-11-11	Michael Hanson	Michael D. Hanson	1161 SUNFLOWER ST TD 97058
20	11-11-11	Darrell Klampe	Darrell Klampe	1155 Sunflower S.T. D. 97058.
21	11-11-11	ANALEA KLAMPE	Analea Klampe	"
22	11-11-11	Gene LaDoucour		1133 Sunflower ST. TD
23	11-11-11	Christine K LaDoucour	Christine K LaDoucour	1133 Sunflower St. TD 97058
24	11-11-11	Pat [illegible]	Pat [illegible]	1125 Sunflower St T.D 97058
25	11-11-11	Luis Olivares	Luis Olivares	1125 Sunflower St T.D 97058

Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	8/26	S. DEMOSTHENES		1100 FIRST AVE. MOSIER
2	8/26	RON CARROLL		PO BOX 691 MOSIER OR
3	8/26	BRENDA CARROLL		P.O. BOX 691, MOSIER, OR 97040
4	8/26	CARL MEINBERG		P.O. BOX 602/2433 MTN VIEW DR 97040
5	08/26	Ernest Strang		8523 HWY 30 W, The Dalles OR 97058
6	08/28	Lucas Hill		670 Wilson Rd. [redacted] Mosier, OR 97040
7	08/27	Adam Hill		670 Wilson Rd. Mosier, OR 97040
8	8/27	Catherine Hill		670 Wilson Rd MOSIER OR 97040
9	8/27	[redacted] Hill		670 Wilson RD MOSIER OR 97040
10	8/27	Nelly Demosthenes		BOX 511 MOSIER, OR 97040.
11	8/28	M Mayfield		6005 Rowena River Rd The Dalles 97058
12	8/28	P.R. Griffith		302 W. 9th St TD 97058
13	8/29	KRISTEN McNALL		2345 STER Rd PO 305 Mosier OR 97040
14	8/28	Susan J Conklin		1890 Paradise Ridge Rd, Mosier, OR 97040
15	8/28	[redacted]		106 3rd St Mosier OR 97040
16	11/1/11	Jim Gray		2732 Old Dufur Rd T.D. Or.
17	11/1/11	STEVE HUNT		5922 CHERRY Hgts Rd. The Dalles, OR. 97058
18	11/11	Leo Deg Sr.		1119 Sunflower The Dalles, OR 97058
19	11/11	Mildred Deg		1119 Sunflower The Dalles, OR. 97058
20	11/11	Selena Radke		4745 Lockwood, The Dalles, OR 97058
21	11/11	SANDRA PRENTICE		4803 LOCKWOOD, THE DALLES, OR 97058
22	11/11	RICHARD PRENTICE		4803 LOCKWOOD THE DALLES OR 97058
23	11/11	Katrina Balbani		4738 Lockwood, The Dalles OR 97058
24	11/11	JACOB BURBANK		4738 LOCKWOOD THE DALLES OR 97058
25	11/11	Mic Hodges		4725 Lockwood The Dalles Or

Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	11/5/11	Sandra Haechrel	SHaechrel	Sandystitch@hotmail.com
2	11/5/	Patricia Nelsen	PATRICIA NELSEN	THE DALLES, OR 97058
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Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	8/12/11	W. Boyd Jacobsen	W.B. Jacobsen	1312 W. 10th #3, THE DALLES, OR 97058
2	8/12/11	GABRIELLE A. JACOBSEN	Gabrielle A. Jacobsen	1312 W. 10th #3, THE DALLES, OR 97058
3	9/24/11	Jewel Wodsey	[illegible]	318 W 6th The Dalles Or 97058
4	9/24/11	Donna R Culp	Donna R Culp	514 W 17th St. The Dalles, OR 97058
5	9/28/11	Callie Jordan	Callie Jordan	207 W 7th St. TD OR 97058
6	9/28/11	Nancy Fisher	Nancy Fisher	611 W. 11th St., The Dalles OR 97058
7	10/1/11	Amy Rivers	Amy K Rivers	827 E 7th St. The Dalles OR 97058
8	10-1-11	AMY R RIVERS	[illegible]	827 E 7th St. THE DALLES, Or 97058
9	10-3-11	Judy Merrill	Judy Merrill	400 W. 11th St The Dalles OR 97058
10	10.4-11	Connie Krummrich	Connie Krummrich	123 W. 13th The Dalles OR 97058
11	10-8-11	Jean Vercouteren	Jean Vercouteren	1624 Montana, The Dalles, OR 97058
12	10/8/11	KARL VERCOUTEREN	Karl Vercouteren	1624 MONTANA ST, THE DALLES, OR 97058
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Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	1/15/12	ANDREW MERRITT		rideonfaith@yahoo.com
2	1/15/12	KRISTIN CURRIN		2355 OSBURN CUT-OFF, MOSIER
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Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

	Date	Name	Signature	Address/Email address
1	7/18/11	David Bullock	D B u t	6575 Martin Rd, The Dalles, OR 97058
2	7/22/11	Joella Bullock	Joella Bullock	sevendog@gorge.net
3	7/29/11	Adrienne Burton-Jones	Adrienne Burton-Jones	1311 Trevitt St., The Dalles OR. 97058
4	8/6/11	Maggie A. Pando	Maggie A. Pando	1309 Trevitt St. The Dalles, OR. 97058
5	8/6/11	Eloy R. Pando	Eloy R. Pando	1309 Trevitt St The Dalles OR 97058
6	8/6/11	Dora E. Mee	Dora Mee	609 W. 13 The Dalles, Or 97058
7	8/6/11	Mishon Hamm	Mishon Hamm	610 W 13th St. The Dalles, OR 97058
8	8/6/11	Mary E. Emerson	Mary E. Emerson	709 W. 13th The Dalles, Or 97058
9	8-6-11	Norman E. Emerson	Norman E Emerson	709 W. 13th The Dalles, OR 97058
10	8/6/11	Dee Appersun	Dee Appersun	708 W 13th St The Dalles, Or 97058
11	8-6-11	Joseph Whitaker	Joseph Whitaker	1314 Mt Hood St The Dalles OR 97058
12	8-6-11	Jillian A. Whitaker	Jillian A. Whitaker	1314 Mt. Hood St. The Dalles OR 97058
13	8-6-11	Betty Richmond	Betty Richmond	1402 Mt Hood St. The Dalles OR 97058
14	8-6-11	Lori Harris	Lori Harris	812 W 13 The Dalles, OR 97058
15	8-6-11	Darlene Way	Darlene Way	816 W. 13th, The Dalles, OR 97058
16	8-6-11	Dane Way	Dane Way	816 W 13th, The Dalles, OR 97058
17	8-6-11	Bill Jones	Bill R Jones	1311 Trevitt St, The Dalles OR 97058
18	8/6-11	Roland Sayler	Roland Sayler	1505 E 9th St - The Dalles, OR 97058
19	8/8/11	Juanita Neitling	Juanita Neitling	500 W 13th St The Dalles OR 97058
20	8/8/11	[illegible]	[illegible]	400 W 9th The Dalles OR 97058
21	8/21/11	Tim Foote	Tim Foote	2777 Osborn ~~Rd~~ Cutoff Rd. Mosier Ore. 97
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Petition for Safe Setbacks in Wasco County

As residents of Wasco County, we request that the Wasco County Board of Commissioners adopt as a standard a minimum setback of 1.5 miles from residences to wind turbines when siting wind energy facilities in Wasco County.

10 of 17

	Date	Name	Signature	Address/Email address
1	1-14-12	Angela Vance	Angela Vance	2002 Ridge Rd. The Dalles, OR 97058
2	1-14-12	Loyd Morris	Loyd Morris	2067 Ridge Rd The Dalles OR 97058
3	1-14	EDNA Morris	Edna Morris	2067 Ridge Rd The Dalles OR 97058
4	1/14/12	Hugo Ramsey		2095 Sevenmile High Rd The Dalles OR 97058
5	1-14	Lillian Reed	Lillian Reed	2090 " " " " "
6	1-14-12	Teresa Hunley	Teresa Hunley	2090 " " " " "
7	1-14-12	Alma Perez	Alma Perez	2090. " " " " "
8	1-15-12	Chad Reece	Chad Reece	2002 Ridge Road " "
9	1-15-12	Avery Reece	Avery Reece	2002 Ridge Road " "
10	1/16	Krista Crosher-Womble	Krista Crosher-Womble	2005 Ridge Rd The Dalles Or 970
11	1/16	Mack Womble	Mack Womble	2005 Ridge Rd The Dalles Or 970
12	1/16	Nancy Cantrell	Nancy Cantrell	2035 Ridge Rd The Dalles OR 9705
13	1/17	Richard J Meyer	Richard J Meyer	2175 Ridge Rd The Dalles OR 970
14	1/17	GEORGIANA A M MURRAY	Georgiana A M Murray	2175 Ridge Rd. The Dalles OR 9705
15	1-17	LOLA TEETERS	Lola Teeters	6675 Halliburton Rd. The Dalles OR 9705
16	1/17	Margaret C. Bolton	Margaret C. Bolton	2040 Sevenmile High Rd The Dalles 97058
17	1-17	Richard P Nichols	Richard P Nichols	2040 Sevenmile High Rd The Dalles OR 9705
18	1-17	ROGER C. WAGNER		6671 Martin Rd The Dalles OR 97058
19	1-17	Judy Wagner	Judy Wagner	6671 Martin Rd The Dalles OR 9705
20	1-17	THURMAN CANTRELL	Thurman Cantrell	2035 Ridge Rd The Dalles OR 97
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March 20, 2012

Wasco County Chapter 19 Energy Ordinance Public Hearing:

My name is Sheila Dooley and I own a house and property in the resource zone. I have owned property in the F2-80 resource zone in the Seven Mile Hill area since the 1970's.

Specific comments:

The proposed ordinance states that the applicant may be required to submit a qualified expert's noise analysis and written report. If the applicant is applying for wind turbines to be located anywhere near residences, the ordinance should state that the applicant shall, not may be, required to pay for a noise study. The cost should be included in the application fee for a siting permit.

In regards to noise, having accurate noise measurements is critical. The developer is still going to have to meet the DEQ noise regulations no matter what the setback. EFSC applies the DEQ noise standard and the setback has to be adequate to meet that or the developer will need a waiver/variance.

The applicant shouldn't be the one supplying the noise measurements or any other required survey results such as wildlife surveys. A consultant or noise analyst hired by a company can spin the results for whoever hires them as was the case with UPC and the Cascade Wind Project.

UPC didn't follow the state regulations and took measurements when wind was 18 mph while the limit is 10 mph.

UPC tried to transpose the results from one side to the other. They took measurements by Browns Creek (RR5 or RR10) and tried to apply them to the forest zone in the Vensel Ketchum Rd. area, which is a much quieter area located several miles away with a ridgetop between the two.

If this project had gone through as proposed would have been noise problems for residents according the Kerrie Standlee (the noise analyst the state contracts with).

The noise analysis needs to be done by an independent third party not selected by the developer (such as the noise analyst that the State Dept. of Energy contracts with).

Allowing the developer to submit their noise measurements is the equivalent of letting them hire their own building inspector. County Planning doesn't operate on the honor system.

This also places the burden of proof on the adjoining land owner to prove that noise won't be a problem.

Citizens will assume that the adopted setback is adequate. When a development with an inadequate setback is proposed near, them, residents who know enough to do so and can afford it will be forced to hire their own noise analyst and attorney (at a cost of many thousands of dollars) in order to contest it and protect the livability of their homes. Once the wind turbine is installed, it's not going to be moved.

The 2/3 mile proposed setback for the resource zone will not be adequate for those of us with homes in the Vensel/Ketchum Rd. area based on where turbines were proposed in the UPC/Cascade Wind project.

At the Planning Commission meeting of June 7th, 4 out of the 7 Planning Commissioners agreed to a ¾ mile setback in the resource zone as a compromise between those wanting more or less. The motion was made as a number of feet (3520 feet which is 2/3 mile) not 3/4 mile with no explanation of the conversion of feet to miles. Some if not all of the commissioners thought they were voting on a ¾ mile setback. This was after they were led to believe there was a standard EFSC setback of ¼ mile. Two did not want to be more restrictive than the nonexistent state standard.

Page 19-25 Natural Resource/Wildlife Protection: The energy facility has been designed and will be constructed and operated without significant adverse impact to important or significant natural resources.

There are currently different rules that apply to the forest and agricultural zones. Different rules should apply for wind turbines also. With forest land there are 3 considerations : soil/habitat/how noise travels.

Noise:

Topography and placement of wind turbines on ridge tops can amplify the noise and need to be taken into consideration. Hilly and mountainous terrain can cause turbine noise to be heard at greater distances than on flat land.

In Europe 1.5 mile setbacks are routinely used with a greater setback in mountainous terrain, especially in areas with long parallel ridges and valleys, similar to what exists in the Mosier area – where we've seen how sound can echo down from the ridge tops (such as barking dogs or someone driving at the top of the ridge). The noise gets louder as it travels down the ridge. Our neighbors complain about our dogs barking when we can barely hear them - it sounds like an echo down below us. I can imagine what a wind turbine above us would sound like.

Habitat and soil:

When UPC proposed its Cascade Wind project on Seven Mile Hill, one of the impacts that could not be mitigated was the loss of the pine oak habitat. This is a unique and important habitat, and wind turbines should not be permitted in these areas. Forest land has a habitat value that agricultural land doesn't which needs to be protected, especially in the Big GameWinter Range area and Sensitive Wildlife Overlay Zone.

When wind turbines are installed on uneven terrain such as in the hilly or mountainous areas found in the forest zone, the land is blasted and the hillsides leveled to create a huge flat area to site the turbines on. This destroys the soil and habitat value, and takes it out of resource use for a lifetime.

Page 19-21C: EFSC Review: Question of Board of County Commissioners soliciting public input: The public should be included in the process to enable the commissioners to hear all points of view and make an informed decision. The BOCC represents the public and shouldn't just get the developer's viewpoint. They should hear from the people they represent.

In closing:

The wind industry continues to deny that noise is a serious problem. They deny the validity of any noise complaints in spite of rising evidence to the contrary. At the same time people living near wind turbines who sign waivers agree to not complain. If wind turbines are so benign, why do residents have to sign gag orders as part of the waiver? EFSC will never hear from these people because they are accepting hush money and can't complain.

Sincerely,

Sheila Dooley

Sheila Dooley

816 E. 13th St.

The Dalles, Oregon 97058

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March 20, 2012

Hand Delivered

Wasco County Board of Commissioners
C/o Wasco County Planning and Development
2705 E. Second Street
The Dalles, OR 97058

Re: Setbacks; Legislative Text Amendments to WCLUDO Chapter 19

Dear Commissioners:

In response to citizen petitions asking for 1 ½ mile setbacks, Iberdrola's attorney wrote on February 7 that persons opposing these setbacks would appear at the February 15 hearing. However, it turned out that the persons produced by Iberdrola to oppose setbacks were people who would be paid by the wind company to have turbines on their property. This is no surprise. Easy money is always an attractive lure. You can't really blame these property owners. They stand to be paid significant sums of money for doing absolutely nothing. The wind company does all the work, leaving the property owner only the task of cashing the check. It is a very sweet deal for them.

However, in opposing setbacks that also include waivers allowing anyone who so desires to be relieved of those setbacks, these owners are essentially asking you to eliminate their neighbor's rights in order to line their own pockets. The rights of the many who do not wish to suffer the impacts of industrial wind facilities are every bit as deserving as the rights of the few who are getting paid to do so.

There is no question that the impacts of industrial wind facilities on nearby residences can be life-changing. Very recent medical and scientific studies have now confirmed and explained longstanding anecdotal reports of sleep deprivation, migraine headaches, dizziness, unsteadiness, nausea, exhaustion, anxiety, anger, irritability, depression, memory loss, cognitive problems with concentration and learning, and tinnitus (ringing in the ears). It is important to note that complaints of turbine sound and the medical and scientific studies tend to focus on night-time hours when people are inside their homes trying to sleep.

Current EFSC standards and DEQ noise standards were developed before this research was published. The more important wind-specific studies, many of which are cited in the draft Oregon HIA dated January 2012, have been published since 2009, whereas the EFSC standards were last updated in 2007 (OAR chapter 345 division 022) and the DEQ noise standards were last updated in 2004 (OAR Chapter 340 division 035). Wasco County should adopt setbacks that incorporate the current state of medical and scientific knowledge that was not available to EFSC and DEQ at the time their standards were adopted.

Since EFSC last updated its laws in 2007, the need for reasonable setbacks has been confirmed by various independent sources, including:

(1) The draft Oregon HIA dated January 3, 2012:

> "The potential impacts from wind turbine sound range from moderate disturbance to serious annoyance, sleep disturbance and decreased quality of life. Chronic stress and sleep disturbance could increase risks for cardiovascular disease, decreased immune function, endocrine disorders, mental illness and other effects [8-12]. Many of the possible long term health effects may result from or be exacerbated by sleep disturbance from night-time wind turbine sound [16, 18)." HIA, p. 9

(2) The LUBA decision on January 12, 2012 in *Cosner et al v. Umatilla County* (LUBA No. 2011-070-072). LUBA stated:

> "* * * According to petitioners, there is no evidence or justification in the record to support a two-mile setback, as opposed to a lesser setback.
>
> The county responds that the county chose to expand the existing 3,250-foot setback from residential zones to a two-mile setback from rural residences and urban growth boundaries, based on voluminous testimony regarding noise impacts up to two miles from wind facilities. Based on the testimony cited to us by the county, we agree with the county that the record provides an adequate factual base supporting the county's choice to impose a two-mile setback from wind facilities.* * * * * (LUBA opinion at 21-22).

(3) The Bruce McPherson Infrasound and Low Frequency Noise Study, dated December 14, 2011 (Executive Summary attached). The focus of this study was not on the audible noise generated by wind turbines, but rather on the inaudible low frequency infrasound and its effect on the human vestibular system. The authors conclude:

> "The study confirms that large industrial wind turbines can produce real and adverse health impacts and suggests that this is due to acoustic pressure pulsations, not related to the audible frequency spectrum, by affecting the vestibular system especially at low ambient sound levels. The study results emphasize the need for epidemiological and laboratory research by medical health professionals and acousticians concerned with public health and well-being. *This study underscores the need for more effective and precautionary setback distances for industrial wind turbines. It is especially important to include a margin of safety sufficient to prevent inaudible low-frequency wind turbine noise from being detected by the human vestibular system."* (emphasis added).

The entire 51 page report may be viewed on-line at the website of randacoustics.com, or by a web search for "Bruce McPherson Infrasound and Low Frequency Noise Study".

(4) A report by Dr. Sarah Laurie of Australia to the Australian Federal Senate in March 2011 (Executive Summary attached). Dr. Laurie proposes setbacks of 6 miles pending further research on low frequency infrasound.

(5) Dr. Nina Pierpont's book Wind Turbine Syndrome, published in 2009 (Executive

Summary attached). Dr. Pierpont has recommended setbacks of *at least* 1.5 miles from residences in mixed terrain, and 2-3 miles in hilly or mountainous topography.

(6) Even the draft study submitted by Iberdrola's attorney ("Wind Turbine Impact Study" dated January 2012) concludes that noise from wind facilities can cause "annoyance" and sleep disruption. The authors reference a number of independent studies from 2007 to 2011 in Sweden, The Netherlands, New Zealand and the U.S. that found such impacts to nearby residents. The definitions of "annoyance" cited by the authors at page 15 include "distress and aversion which if maintained can lead to a deterioration of health and well-being".

I continue to encourage the adoption of a two mile setback from non-resource zone boundaries, and from resource zone dwellings, with a waiver or "adjustment" of the setback for resource zone dwellings. I believe the maps that purport to show the land in Wasco County that would be unavailable for wind facilities if setbacks are adopted are very misleading for the reason that they do not reflect the most important variable, waivers. If I understand correctly, a circle was drawn around every address of record to reflect various setbacks (e.g. 1 mile) and it was assumed there was a dwelling at each such address. However, in the great expanses of farm and rangeland in south Wasco County, the landowners who want to lease to the wind company will in most cases also be the owners of the dwellings that are shown on the map, and they will waive the setback. And where that is not the case, the unwillingness of a single property owner to sign a waiver will not cause a project to be scrapped, rather only the turbine configuration will need to be re-designed to satisfy the setback as to that property. The inability to account for the waiver variable in the maps makes them very misleading.

By way of example, attached is a list of property tax accounts for three Shaniko/Maupin area families who expressed a desire to lease their land to wind companies at the February 15 hearing (Connolly Land and Livestock, Carver and Ashley). A review of the acreages and number of residences listed in the records with respect to these accounts show 9 residences on a total combined ownership of approximately 70,000 acres in Wasco County. Whereas the one mile setback maps would show 1 mile around each of these residences as being unavailable for wind turbine siting, in reality all of this land may well be available as these owners have both the ability and inclination to waive the setback.

Waiver or "Adjustment"

The language proposed by staff relative to a property owner's ability to waive the setback through an 'adjustment" needs to be changed to clarify that no adjustment will be granted without the landowner's written consent. I have set forth staff's language and added and underlined the needed additional language:

"An applicant may request an adjustment to the resource dwelling setback described above without being subject to the variance processes in Chapters 6 or 7 and pursuant to the Administrative Action process of Section 2.060(A). As part of the permitting process the request shall demonstrate safety factors have been considered and a lesser setback is warranted. <u>The written consent of the affected property owner shall be required for all such requests</u>. Factors to support an adjustment include, but are not limited to:

(a) The property owner's support or consent of a lesser setback.

(b) Applicant's ability to comply with DEQ noise regulations.

(c) Site specific conditions of the site.
(d) Avoiding or minimizing potential environmental or resource impacts.

Whether termed a "waiver" or an "adjustment", the purpose is to allow turbines to be sited closer to dwellings than the setback allows if the owner of the dwelling so chooses. The goal is to honor the wishes of the landowner. The waiver in the Cosner case was defective only because there was no provision for county review. LUBA stated that only modest changes were needed to fix what LUBA termed an unconstitutional delegation of county authority. All that is needed is to make the landowner's consent and waiver subject to county approval in the public interest.

Special Advisory Group

The right of the public to comment on the applicable substantive criteria when the BOCC convenes to establish the criteria should be retained. Contrary to the staff report, it is not clear that the public can comment directly to EFSC as to the applicable local criteria. The relevant part of OAR 345-022-0030 (3) suggests otherwise:

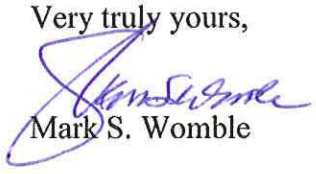
> "(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them."

The use of the mandatory phrase "shall apply them" suggests that EFSC can only apply what the Special Advisory Group gives them.

Further, the applicable OAR (345-21-0050 (4) (b)) does not appear to set a specific time limit for the county to submit the applicable criteria. There does not appear to be a time constraint that requires excluding public comment.

Thank you for this opportunity to comment.

Very truly yours,



Mark S. Womble

Wind Turbine Syndrome: A Report on a Natural Experiment

Nina Pierpont, MD, PhD

Executive Summary

12/20/2009

The core of the book is a scientific report presenting original, primary research on symptomatic people living near large industrial wind turbines (1.5-3 MW) erected since 2004.

These are the findings:

1) Wind turbines cause Wind Turbine Syndrome. We know this because people have symptoms when they are close to turbines and the symptoms go away when they are away from turbines. The study families themselves figured out that they had to move away from turbines to be rid of their symptoms, and nine out of ten have moved. Some sold and some abandoned their homes.

2) People do not abandon their homes out of "annoyance." Reported symptoms, such as sleep deprivation, dizziness, and nausea, cannot be dismissed as "annoyances."

3) The symptom cluster is consistent from person to person, hence the term "syndrome."

4) The symptoms are sleep disturbance and deprivation, headache, tinnitus (ringing in ears), ear pressure, dizziness, vertigo (spinning dizziness), nausea, visual blurring, tachycardia (fast heart rate), irritability, problems with concentration and memory, and panic episodes associated with sensations of movement or quivering inside the body that arise while awake or asleep.

5) Children are affected as well as adults, especially older adults.

6) People with pre-existing migraine disorder, motion sensitivity, or damage to inner ear structures (such as hearing loss from industrial noise exposure) are more susceptible than other people to Wind Turbine Syndrome. These results are statistically significant ($p < 0.01$).

7) Wind Turbine Syndrome symptoms are not statistically associated with pre-existing anxiety or other mental health disorders.

8) The sample size of 10 families/38 people was large enough for statistical significance with regard to susceptibility or risk factors.

9) The susceptibility factors are clues to the pathophysiology of Wind Turbine Syndrome. The symptom complex resembles syndromes caused by vestibular (inner ear balance organ)

dysfunction. The proposed mechanism is disturbance to balance and position sense by noise and/or vibration, especially low frequency components of the noise and vibration.

10) An extensive review of recent medical literature reveals how balance-related neural signals affect a variety of brain areas and functions, including spatial awareness, spatial memory, spatial problem-solving, fear, anxiety, autonomic functions (like nausea and heart rate), and aversive learning. These known neural relationships provide a robust anatomic and physiologic framework for Wind Turbine Syndrome.

11) Medical and technical literature on the resonance of sound or vibration within body cavities (chest, skull, eyes, throat, ears) is reviewed, since study subjects experience these effects.

12) Published studies of documented low frequency noise exposure (both experimental and environmental) are reviewed. These demonstrate effects on people similar or identical to Wind Turbine Syndrome. Indeed, one study from Germany in 1996 may indeed be Wind Turbine Syndrome.

13) Recent mail-in survey studies of people who live near wind turbines in Sweden and the Netherlands are reviewed. These show that people are severely annoyed at noise from wind turbines at much lower A-weighted noise levels than for traffic, train, or aircraft noise.

14) Published literature documenting the effects of environmental noise on cardiovascular health and children's learning are reviewed. For health reasons, the World Health Organization recommends lower thresholds for nighttime noise than are currently observed in most countries —especially when the noise has low-frequency components.

15) Wind Turbine Syndrome gives a name and medical description to a set of symptoms severe enough to drive people from their homes and establishes medical risk factors for such symptoms. This study and other studies reviewed in the report indicate that safe setbacks will be at least 2 km (1.24 miles) and even longer for larger turbines and in more varied topography. Further research is needed to clarify physical causes and physiologic mechanisms, explore other health effects of living near wind turbines, determine how many people are affected, and investigate effects in special populations, including children. Government funding and moratoria are appropriate.

The book further includes:

A) Full case histories—the words and experiences of all the study subjects (including children), presented in an organized tabular format.

B) The report presented again in non-scientific, layman's language, explaining the medical, technical, and statistical aspects of the study. This section is illustrated.

C) Peer reviews and commentary by scientists and university physicians.

D) Introduction, complete list of scientific and medical references, glossary, and list of abbreviations.

SUBMISSION TO THE AUSTRALIAN FEDERAL SENATE INQUIRY ON RURAL WIND FARMS

10th FEBRUARY, 2011

DR SARAH LAURIE
BMBS (Flinders 1995)
Awarded FRACGP 1999
Awarded FACCRM 2000

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EXECUTIVE SUMMARY

1. There are reports from around the world of people living adjacent to wind turbine developments becoming unwell with the same range of symptoms

2. The few studies which have been done by concerned medical clinicians have consistently found these problems

3. The medical evidence which exists from Dr Pierpont's landmark peer reviewed case series cross over study clearly links exposure to turbines with the symptoms being described

4. Not all adjacent residents are affected

5. Some developments appear to have more seriously affected residents than others

6. Some residents are affected immediately, others are progressively affected over weeks to months of constant exposure

7. Chronic exposure appears to have a cumulative effect

8. The time taken to achieve full resolution of symptoms is proportional to the time exposed to turbines

9. Not all symptoms are reversible after chronic exposure, when affected residents move away

10. Some extremely ill residents in desperation have signed confidentiality agreements with wind developers, who have purchased their properties, in exchange for agreeing not to talk publicly about their health problems, in order to leave their homes and regain their health.

11. Residents are describing symptoms from a distance of up to 10km away from the nearest turbine

12. Elevations of blood pressure associated with proximity to operating turbines are an emerging issue

13. Some people appear particularly vulnerable to developing wind turbine syndrome symptoms, and they include children and the elderly

14. There a number of possible mechanisms for these symptoms and they include but are not limited to:

- Audible noise causing chronic sleep deprivation (we know from affected residents that wind turbines can be very noisy, both upwind and downwind)
- Wind turbine specific pulsatile infrasound and low frequency noise causing many of the symptoms of wind turbine syndrome (probable, based on current but limited experimental evidence, and recent measurement of wind turbine specific pulsatile infrasound)
- Possible health effects from electromagnetic radiation issues in a few specific cases – in situ measurement required initially in these homes to determine if this is an issue for further investigation

development companies, on site. I am told by current and ex employees of different wind developments that they are not advised of any health issues or monitoring required, as officially "there are no health problems". I am particularly concerned about the need to monitor blood pressures of workers on turbine developments, as elevated blood pressures are generally symptom free.

4. The new national work health and safety laws are to be enacted this year, and will take effect from 1st January, 2012. In those new laws, there is a specific onus on individuals conducting a business to provide a safe workplace, and health is specifically described as including both physical and psychological health. This will further increase the pressure on those farmers to "provide a safe workplace", which it is clearly impossible for them to do if they are surrounded by wind turbines.

MECHANISMS OF CAUSATION of Illness resulting from Wind turbines, and related regulatory issues

The exact mechanisms for causation of all the ill health resulting from turbines are not all clear, however I make the following comments

1. Audible Noise

Wind Turbines can be noisy, even some elements of the wind industry have admitted this (eg Sloth, 2010, summary page). There is no doubt that some people are particularly affected by the audible noise from turbines, which is uniquely disturbing or annoying for many people at much lower sound pressure levels than for other sources of noise. I am not going to discuss the extensive medical evidence which exists in the published peer reviewed medical literature about the adverse effects of audible noise on health, and on sleep, but again refer readers to Dr Robert McMurtry's submission to the Senate Inquiry on this topic.

In addition, Dr Bob Thorne and Dr Daniel Shepherd's work on individual noise sensitivity is highly relevant here (please refer to their respective Senate Submissions) – what is disturbing to one individual who is noise sensitive, may not disturb another. This is yet another reason to ensure that turbines are sited well away from human habitation, to ensure that those who are noise sensitive are not going to be adversely impacted, with direct health adverse consequences because of chronic sleep

deprivation from audible noise.

The issues of increased night time noise from turbines is something which a number of acousticians have written extensively about, particularly Dr Bob Thorne, Dr Frits Van Den Berg, and Mr Rick James. What I hear from affected residents is that their sleep and therefore their health is particularly affected by audible noise on nights where there is ridgetop wind, but the background noise around their home is quiet. On these nights, the audible noise can mean that some affected residents get very little sleep.

This noise has been described to me from residents of houses up to 8km away from the turbines, and I have heard it myself from turbines at a distance of 4km, on such a night, at Waubra. It literally can sound like a loud overhead jet engine, which doesn't ever leave. Other residents describe the noise as being like a washing machine, or a truck or train constantly making a noise, and never going anywhere. I have recently visited a number of houses adjacent to the Capital Wind Development in NSW, and have heard this variation in sound for myself.

I am not an acoustician, but acousticians I work with tell me that current audible noise measurements are based on averages, rather than actual peaks of audible noise intensity. As Professor John Harrison made clear at the Symposium in Ontario, "the ear does not hear 'averages', it hears the peaks (please see his conference paper on the windvigilance.com website).

If the audible sound "peaks" are what is waking people up, then consideration needs to be given to changing the current guidelines, ensuring that such peaks are measured, and then acted on, if the adverse and serious health consequences of chronically disturbed sleep are to be prevented.

In addition, many people I spoke to described how their ears / brains seemed to 'tune into' the sound of wind turbine audible noise, so that what was not annoying for the first five minutes became intensely annoying or disturbing after a few hours or days, let alone months.

Mr Erik Sloth, in his frank presentation to the Clean Energy Council in May 2010, referred to some inadequacies of current acoustic modeling in predicting actual wind turbine noise – certainly the perspective of affected residents I have spoken with is that the noise they are living with on a regular basis is very loud, and very disturbing.

There is a major problem with the process, if the noise predictions used by the wind developers in their planning applications bear no reality to the noise actually generated in the field post construction, as is happening currently at multiple wind developments to my knowledge, specifically Waubra, Waterloo, and Mt Bryan. It is simply not good enough for the developers to admit, post construction, that "we didn't realize they would be so noisy".

One of the more damaging and disempowering wind company practices is to refuse to release post construction audible noise monitoring data when requested to do so by the affected residents, giving the excuse that it is "inconclusive", or releasing it in such a form that it is impossible for them to interpret (eg a wad of sheets of paper with noise numbers). According to affected residents I have spoken with, this has happened at Mt Bryan, Waubra, Toora, and Capital wind farms.

2. Low Frequency Noise (LFN) and infrasound

Low Frequency noise is generally defined as sound waves with a frequency less than 200 Hz. Infrasound has a frequency of less than 20 Hz, which is generally imperceptible to the human ear, but may be perceived as a vibration. It is important to note that all the current noise regulations specify dBA or audible noise level limits, but there appears to be little or no regulation specifically governing the acceptable or 'safe' sound pressure levels of infrasound.

Dr Alec Salt has shown experimentally how infrasound can adversely affect the mechanisms operating the sensitive inner ear function at much lower sound pressure levels than are perceptible to human hearing. This means that even though you cannot 'hear' the infrasound waves, they are still impacting on your inner ear and brain. (see conference proceedings on windvigilance.com). His work is leading the world in this area, and has been peer reviewed and published.

Dr Nina Pierpont has also referred to the current research literature relating to the brain and the vestibular system in particular, in both her study and in her recent presentation and paper for the International Symposium, (available at windvigilance.com) and submitted to the Senate committee.

There are also published peer reviewed scientific studies which confirm that the effects of exposure to infrasound are cumulative (Perrson & Waye,), can affect cognition & memory (ibid), can affect mood & work performance (ibid), and can result in elevated

blood pressure, heart rate, and affect mood (Qibai & Shi).

Whilst these experiments have not been done with wind turbine specific pulsatile infrasound, they are highly suggestive that infrasound may indeed by a causative agent in many of the symptoms of wind turbine syndrome. There is an urgent need for further research into this specific area, because of the finding below.

Mr Rick James (Acoustician) showed a sound spectogram during his presentation at the International symposium in Ontario on October 29th, 2010, and stated that he had measured the wind turbine specific pulsatile infrasound using a Sound Quality Analysis Instrument, and found infrasound up to a sound pressure level of 90 dB, which was a much higher sound intensity than previously thought possible from modern upwind turbines (available on windvigilance.com, second last page of his presentation, further details available on request).

There are animal studies which clearly show that infrasound at this sound pressure level of 90dB can cause physiological changes, in particular stimulation of the body's fight / flight response, or sympathetic nervous system. There is also evidence of tissue damage with long term high intensity infrasound exposure. There are multiple relevant papers which are cited in a Review of the toxicology of infrasound, (2001) by the National Institute of Environmental Health Sciences.

A number of the patterns of symptoms which affected residents have described would certainly fit with the experimental evidence of stimulation of the sympathetic nervous system by infrasound; particularly the waking up in the middle of the night panicked, the anxiety symptoms, the elevated blood pressure, the tachycardia, the episodes of acute hypertensive crises, Tako Tsubo induced heart attacks, to name a few.

There is certainly an urgent need for further specific research into the effects of acute and chronic infrasound and LFN exposure on humans and animals, at the measured levels of wind turbine specific pulsatile infrasound in the field being emitted by the turbines. Professor Colin Hansen, Acoustics Professor from Adelaide University, has expressed an interest in being involved in such studies, in conjunction with a Physiologist or Clinician.

This basic infrasound measurement in the field and in the affected people's homes has not ever been done, and urgently needs to be. Both Dr Bob Thorne and Professor Colin Hansen are keen to do this.

We don't know what a 'safe' level of infrasound emission from a turbine is, particularly with cumulative chronic exposure, and particularly with exposure of particularly vulnerable populations, especially the elderly, children, and unborn babies.

Some clinicians working in this area are now concerned that the illness called Vibro-Acoustic disease, which results from chronic long term high intensity infrasound exposure, (particularly in the aviation / defence industries) may be relevant in this context of chronic exposure to wind turbine infrasound, given the recent high intensity levels of pulsatile wind turbine specific infrasound, recorded by Mr Rick James, in Ontario, (previously mentioned).

Given what we do know already about infrasound exposure, it would seem imperative to immediately adopt the precautionary approach, and not site turbines within distances where people are currently experiencing symptoms (10km), until such detailed infrasound studies are done.

Dr Bob Thorne, Dr Daniel Shepherd and their colleagues from Massey University have submitted a study proposal which would significantly increase current knowledge in this area, which is ready to start immediately, as are the subjects for the study. All that is required is the funding. Dr Thorne has told me that useful results could be available by six months from commencement of the study.

Other mechanisms

It may well be that other mechanisms are eventually identified as causative agents for some of the symptoms which are being experienced by affected residents, but these remain unidentified at this time. There is certainly concern on the part of some residents that electromagnetic radiation may be playing a part.

At present there is little evidence to support this, however a preliminary step would be to actually measure the electric and magnetic fields in those locations where people are actually experiencing symptoms or other problems suggestive of electromagnetic interference, such as flouro lights lighting up by themselves, as has been reported by some residents.

The Bruce McPherson Infrasound and Low Frequency Noise Study

Adverse Health Effects Produced By Large Industrial Wind Turbines Confirmed

December 14, 2011

Stephen E. Ambrose, INCE (Brd. Cert.)
Robert W. Rand, INCE Member

"The idea that infrasound doesn't or can't affect the ear is just flat-out wrong."

– Dr. Alec Salt
Department of Otolaryngology
Washington University School of Medicine
St. Louis, Missouri, 63110, USA

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Executive Summary

This study was commissioned through a private philanthropic grant created to determine why there were so many strong complaints about the loss of well-being and hardships experienced by people living near large industrial wind turbines operating in Falmouth, Massachusetts. The purpose of this study was to investigate and confirm or deny the presence of infrasonic and low frequency noise emissions (ILFN) from the "WIND 1", a municipally-owned Vestas V82 industrial wind turbine. In March of 2011, after many months of vigorous neighborhood complaints and strong appeals to the town, selectmen voluntarily decided to curtail WIND 1 operations when hub height wind speed exceeded 10 m/s. This required that this study focus on noise emissions from the nearby "NOTUS" wind turbine, an identical make and model.

Acoustics

This study was conducted at a representative neighbor's home in Falmouth and confirmed that there are dynamically modulated low frequency acoustic amplitudes and tones produced by the nearby wind turbine. Dynamic amplitude modulations occurred at 1.4 second intervals that were consistent with the blades rotating past the wind turbine tower (the blade pass rate). Dynamic amplitude modulations below 10 Hz were stronger indoors than outdoors. Modulations measured indoors were 0.2 Pascal peak to peak consisting mostly of energy below 20 Hz. Two tones were detected from both the NOTUS and the WIND 1 turbines, at 22.9 Hz and 129 Hz, and are considered signatures of the wind turbines' acoustic profile. Outdoors, the A-weighted sound level decreased at a predictable rate of 6 dB per doubling of distance from the nearest turbine. The linear unweighted sound level decreased according to cylindrical spreading at 3 dB per doubling of distance and was controlled by acoustic energy below 20 Hertz. A-weighting does not reveal this low-frequency information. Sound-level averaging with Leq for any time length hides the low-frequency dynamic amplitude modulations.

Health effects

The investigators were surprised to experience the same adverse health symptoms described by neighbors living at this house and near other large industrial wind turbine sites. The onset of adverse health effects was swift, within twenty minutes, and persisted for some time after leaving the study area. The dBA and dBC levels and modulations did not correlate to the health effects

experienced. However, the strength and modulation of the un-weighted and dBG-weighted levels increased indoors consistent with worsened health effects experienced indoors. The dBG-weighted level appeared to be controlled by in-flow turbulence and exceeded physiological thresholds for response to low-frequency and infrasonic acoustic energy as theorized by Salt. The wind turbine tone at 22.9 Hz was not audible yet the modulated amplitudes regularly exceeded vestibular detection thresholds. The 22.9 Hz tone lies in the brain's "high Beta" wave range (associated with alert state, anxiety, and "fight or flight" stress reactions). The brain's frequency following response (FFR) could be involved in maintaining an alert state during sleeping hours, which could lead to health effects. Sleep was disturbed during the study when the wind turbine operated with hub height wind speeds above 10 m/s. It took about a week to recover from the adverse health effects experienced during the study, with lingering recurring nausea and vertigo for almost seven weeks for one of the investigators.

Further epidemiological and laboratory research needed

The research is more than just suggestive. Our experiencing of the adverse health effects reported by others confirms that industrial wind turbines can produce real discomfort and adverse health impacts. Further research could confirm that these ill effects are caused by pressure pulsations exceeding vestibular thresholds, unrelated to the audible frequency spectrum but are instead related to the response of the vestibular system to the low frequency noise emissions. The vestibular system appears to be stimulated by responding to these pressure pulsations rather than by motion or disease, especially at low ambient sound levels. Dysfunctions in the vestibular system can cause disequilibrium, nausea, vertigo, anxiety, and panic attacks, which have been reported near a number of industrial wind turbine facilities. The study emphasizes the need for epidemiological and laboratory research conducted by medical health professionals and acousticians working together who are concerned with public health and well-being. This study underscores the need for more effective and precautionary setback distances for industrial wind turbines. It is especially important to include a margin of safety sufficient to prevent inaudible low-frequency wind turbine noise from being detected by the human vestibular system.

5 CONCLUSIONS

5.1 Noise and Pressure Pulsations

The acoustic energy from the wind turbine was found to be:

1) Greater than or uniquely distinguishable from the ambient background levels, and
2) Capable of exceeding human detection thresholds.

This research revealed dynamically modulated low frequency and infrasonic energy from the nearby wind turbine occurring at the blade pass rate; energy which was found to be amplified indoors below 10 Hz. These dynamic infrasonic modulations were absent when the wind turbine was off. The wind turbine has tonal energy at 22.9 and 129 Hz. The wind turbine acoustic emissions were strongly coupled to the indoor environment at very low infrasonic pulsations and at the 22.9 and 129 Hz tones.

The dBA levels were inversely correlated to adverse health effects experienced; effects were more severe indoors where dBA levels were much lower (around 20 dBA). However the dBL (un-weighted) and dBG (infrasonic-weighting) levels were more strongly modulated indoors. This increase in modulation indoors was consistent with the stronger adverse health effects indoors. The increase in total sound pressure indoors appears related to a "whole-house" cavity response; the outside pressure pulsations exciting the interior acoustic pressure much like a stick hitting a drum. Especially, the degree of negative pressure increased significantly indoors compared to outdoors.

5.2 Adverse Health Effects

This research revealed that persons without a pre-existing sleep deprivation condition, not tied to the location nor invested in the property, can experience within a few minutes the same debilitating health effects described and testified to by neighbors living near the wind turbines.

The debilitating health effects were judged to be visceral (proceeding from instinct, not intellect) and related to as yet unidentified discordant physical inputs or stimulation to the vestibular system.

The dBG levels indoors were dynamically modulated at the blade pass rate and tonal frequencies and exceeded the vestibular physiological threshold guideline of 60 dBG provided by Dr. Salt.

Health effects moderated when dBG levels fell well below the 60 dBG guideline when the wind turbine was OFF.

Wind turbine tonal energy at 22.9 Hz lies in the brain's "Beta" range which is associated with alert mental activity and anxiety; antithetical to sleep. The dynamic 0.7 Hz modulations of in-flow turbulence and tonal energy lie in the deep Delta range associated with deep sleep. Clinical evidence of frequency following response (FFR) in the brain suggests that entrainment with wind turbine modulations, pulsations and tones may pose conflict for the brain's natural rhythms, leading to stress when the conflicting signals (the wind turbine) cannot be turned off. Other physiological mechanisms may be in play. Medical epidemiological field and laboratory investigation is needed.

The study confirms that large industrial wind turbines can produce real and adverse health impacts and suggests that this is due to acoustic pressure pulsations, not related to the audible frequency spectrum, by affecting the vestibular system especially at low ambient sound levels. The study results emphasize the need for epidemiological and laboratory research by medical health professionals and acousticians concerned with public health and well-being. This study underscores the need for more effective and precautionary setback distances for industrial wind turbines. It is especially important to include a margin of safety sufficient to prevent inaudible low-frequency wind turbine noise from being detected by the human vestibular system.

Print Key Output Page 1
5722SS1 V5R2M0 020719 WASCO 03/19/12 13:33:28

Display Device . . . . . : W4
User . . . . . : PUBLIC

ASSFDFR PUBLIC ACCOUNT SEARCH BY OWNER NAME DISPLAY 3/19/12
WASCO COUNTY 13:33:24
NAME/FLAG/ROLL CONNOLLY LAND - - <= Position 2012

OPTIONS: X=Select

?	ACCOUNT	OWNER NAME	FLG	MAP #	PROP CODE	RL	
	78530	CONNOLLY LAND & LIVESTOCK	O	4S 14E 0 2700	551 13	M	
	12324	CONNOLLY LAND & LIVESTOCK	O	4S 14E 0 3100	550 13	R	
	12332	CONNOLLY LAND & LIVESTOCK	O	4S 15E 0 500	550 13	R	
	12338	CONNOLLY LAND & LIVESTOCK	O	4S 15E 0 700	550 13	R	
	12465	CONNOLLY LAND & LIVESTOCK	O	5S 14E 0 400	551 13	R	
	12488	CONNOLLY LAND & LIVESTOCK	O	5S 14E 0 500	550 13	R	
	12489	CONNOLLY LAND & LIVESTOCK	O	5S 14E 0 600	550 13	R	
	12508	CONNOLLY LAND & LIVESTOCK	O	5S 14E 0 1600	550 13	R	
	12518	CONNOLLY LAND & LIVESTOCK	O	5S 15E 0 800	550 13	R	
	12527	CONNOLLY LAND & LIVESTOCK	O	5S 15E 0 2400	550 13	R	
	12618	CONNOLLY LAND & LIVESTOCK	O	6S 14E 0 200	550 13	R	
	12679	CONNOLLY LAND & LIVESTOCK	O	6S 15E 0 600	550 13	R	
	15181	CONNOLLY LAND & LIVESTOCK	O	6S 14E 0 100	550 13	R	
	15676	CONNOLLY LAND & LIVESTOCK	O	4S 14E 0 2700	551 13	R	

More...

F3=End

Connolly Land & Livestock
19570 Pinehurst Rd.
Bend, OR

1 Manufactured

#15677
#15678

40
345

39,733 acres 1 Residence

Print Key Output Page 1
5722SS1 V5R2M0 020719 WASCO 03/19/12 13:34:55

Display Device . . . . . : W4
User . . . . . : PUBLIC

ASSFDFR PUBLIC ACCOUNT SEARCH BY OWNER NAME DISPLAY 3/19/12
WASCO COUNTY 13:34:36
NAME/FLAG/ROLL CARVER DANIEL - - <= Position 2012

OPTIONS: X=Select

?	ACCOUNT	OWNER NAME	FLG	<------- MAP # ------>	PROP	CODE	RL	
	12136	CARVER DANIEL	E	4S 14E 32DD 5600	206	11	R	8.3 acres
	12137	CARVER DANIEL	E	4S 14E 32DD 5900	206	11	R	.43
	12152	CARVER DANIEL	E	5S 14E 5AA 1800	100	11	R	.650
	12153	CARVER DANIEL	E	5S 14E 5AA 1900	100	11	R	.200
	13648	CARVER DANIEL	E	4S 14E 32DD 5700	100	11	R	.210
	11449	CARVER DANIEL & EVELYN J	O	4S 12E 14AB 200	231	13	R	4.7
	9096	CARVER DANIEL L	O	1S 12E 0 5200	581	141	R	39.5
	9833	CARVER DANIEL L	O	1S 12E 0 5200	581	293	R	410.0
	12545	CARVER DANIEL L	O	5S 16E 0 2800	551	13	R	4189
	12551	CARVER DANIEL L	O	5S 17E 0 1000	550	13	R	76
	12557	CARVER DANIEL L	O	5S 17E 0 1100	550	13	R	625
	12688	CARVER DANIEL L	O	6S 16E 0 100	550	13	R	10,136
	12696	CARVER DANIEL L	O	6S 17E 0 500	550	13	R	5151
	12698	CARVER DANIEL L	O	6S 17E 0 800	550	13	R	38

More...

F3=End

Dan & Evelyn J. Carver
92462 Hinton Rd
Maupin OR 97037

1 Residence
1 Residence

Wamic Mkt. Rd 72,000 improvements

1 Residence
1 Residence

20,978.99 acres

5722SS1 V5R2M0 020719 WASCO 03/19/12 13:35:01

Display Device . . . . . : W4
User . . . . . : PUBLIC

ASSFDFR PUBLIC ACCOUNT SEARCH BY OWNER NAME DISPLAY 3/19/12
WASCO COUNTY 13:34:36
NAME/FLAG/ROLL CARVER DANIEL - - <= Position 2012

OPTIONS: X=Select

?	ACCOUNT	OWNER NAME	FLG	<------- MAP # ------->	PROP	CODE	RL
	12705	CARVER DANIEL L	O	6S 17E 0 2100	550	13	R
	14491	CARVER DANIEL L	O	6S 17E 0 600	550	13	R
	12530	CARVER DANIEL L & EVELYN	O	5S 16E 0 600	551	13	R
	12537	CARVER DANIEL L & EVELYN	O	5S 16E 0 1600	550	13	R
	12538	CARVER DANIEL L & EVELYN	O	5S 16E 0 1800	550	13	R
	12546	CARVER DANIEL L & EVELYN	O	5S 16E 0 2900	550	13	R
	12550	CARVER DANIEL L & EVELYN	O	5S 17E 0 400	550	13	R
	12552	CARVER DANIEL L & EVELYN	O	5S 17E 0 200	550	13	R
	12553	CARVER DANIEL L & EVELYN	O	5S 17E 0 600	550	13	R
	14388	CARVER DANIEL L & EVELYN	O	5S 16E 0 3100	550	13	R
	14389	CARVER DANIEL L & EVELYN	O	5S 16E 0 3700	550	13	R
	14390	CARVER DANIEL L & EVELYN	O	5S 16E 0 3800	550	13	R
	14457	CARVER DANIEL L & EVELYN	O	6S 16E 0 500	550	13	R
	14458	CARVER DANIEL L & EVELYN	O	6S 16E 0 1200	550	13	R

More...

F3=End

160
333
4560 1 residence
10
80
21
1061
30
4
40
38
40
40
40

6458 acres

Print Key Output Page 1
5722SS1 V5R2M0 020719 WASCO 03/19/12 13:35:09

Display Device . . . . . : W4
User . . . . . : PUBLIC

ASSFDFR PUBLIC ACCOUNT SEARCH BY OWNER NAME DISPLAY 3/19/12
WASCO COUNTY 13:34:36
NAME/FLAG/ROLL CARVER DANIEL - - <= Position 2012

OPTIONS: X=Select

?	ACCOUNT	OWNER NAME	FLG	<-------- MAP # ------->	PROP	CODE	RL	
	14459	CARVER DANIEL L & EVELYN	O	6S 16E 0 1500	550	13	R	120
	14463	CARVER DANIEL L & EVELYN	O	6S 16E 0 200	550	13	R	40
	14464	CARVER DANIEL L & EVELYN	O	6S 16E 0 400	550	13	R	40
	14465	CARVER DANIEL L & EVELYN	O	6S 16E 0 300	550	13	R	40
	14466	CARVER DANIEL L & EVELYN	O	6S 16E 0 600	550	13	R	84
	14468	CARVER DANIEL L & EVELYN	O	6S 16E 0 700	550	13	R	40
	14469	CARVER DANIEL L & EVELYN	O	6S 16E 0 1100	550	13	R	40
	14471	CARVER DANIEL L & EVELYN	O	6S 16E 0 1300	550	13	R	80
	14472	CARVER DANIEL L & EVELYN	O	6S 16E 0 1400	550	13	R	40
	14476	CARVER DANIEL L & EVELYN	O	6S 16E 0 2200	550	13	R	80
	14492	CARVER DANIEL L & EVELYN	O	6S 17E 0 700	550	13	R	46
	14493	CARVER DANIEL L & EVELYN	O	6S 17E 0 900	550	13	R	62

F3=End

725 acres

CARVER TOTAL 20,978
6458
725
28,161 acres 5 residences

Print Key Output Page 1
5722SS1 V5R2M0 020719 WASCO 03/19/12 13:35:47

Display Device . . . . . : W4
User . . . . . : PUBLIC

ASSFDFR PUBLIC ACCOUNT SEARCH BY OWNER NAME DISPLAY 3/19/12
WASCO COUNTY 13:35:40
NAME/FLAG/ROLL ASHLEY LARRY - - <= Position 2012

OPTIONS: X=Select

?	ACCOUNT	OWNER NAME	FLG	<-------- MAP # ------>	PROP	CODE	RL
	12276	ASHLEY LARRY & VICKI	O	6S 16E 36DB 2500	200	12	R
	13313	ASHLEY LARRY & VICKI	O	5S 15E 0 1800	550	13	R
	13316	ASHLEY LARRY & VICKI	O	5S 16E 0 2200	550	13	R
	16171	ASHLEY LARRY & VICKI	O	6S 16E 36AC 6600	100	12	R
	78390	ASHLEY LARRY C & VICKI	O	5S 16E 0 1201	559	13	M
	12254	ASHLEY LARRY C & VICKI	O	6S 16E 36AC 6700	100	12	R
	12512	ASHLEY LARRY C & VICKI	O	5S 15E 0 1100	551	13	R
	12820	ASHLEY LARRY C & VICKI	O	7S 16E 0 400	550	13	R
	16169	ASHLEY LARRY C & VICKI	O	6S 16E 36AC 6800	100	12	R
	17123	ASHLEY LARRY C & VICKI	O	5S 16E 0 1201	559	13	R
	17398	ASHLEY LARRY C & VICKI	O	6S 16E 0 2901	550	13	R
	~~5463~~	~~ASHLEY MASSIE G~~	~~O~~	~~1N 13E 4BD 3100~~	101	121	R
	17730	ASHLEY MASSIE G	O	4S 13E 5 501	451	13	R
	12216	ASHLEY MICKEY L	O	6S 16E 36AC 2800	101	12	R

More...

F3=End

Larry & Vicki Ashley
50530 Lakeview Road
Maupin, OR 97037

.340
282
867
.340
.340
411
876
.340
272
383
~~20~~
23
110

1 Res. dence
1 Manufac. structure
1 residence

3113.47 3 Residences

I would like to address the Wasco Co. Commissioners, Wasco Co. Planners, and other concerned citizens of Wasco Co.

I'm Fred Justesen. My family have been citizens of Wasco and Sherman Co. for five generations. Family members have been involved in agriculture and various other occupations throughout the years. Through the years we have witnessed many changes in demographics, economics, culture, and technology. Wasco Co. is now faced with an industry that will involve all of those.

If we do this right, it's quite possible the wind energy industry can have a very positive effect on our economy. We don't have to look very far to see a good example of this. Sherman Co. has embraced the wind industry and it has been financially rewarding for the county government, the schools, individuals, the towns, and the community as a whole. Sherman Co. has transitioned from (how are we going to pay for this) to (how are we going to spend this money). Call the Sherman Co. Court for confirmation. We should ask ourselves what other industry is going to spend 2 billion dollars in Wasco Co.

There are three energy companies interested in locating projects in Wasco Co. They are proposing large projects that could potentially create hundreds of jobs short term. Once they are in operation they can support a significant amount of full time jobs. The communities in Wasco Co. could benefit from these employment opportunities, also allowing some of our youth to be educated and employed in wind energy technology right here in Wasco Co. New technology in agriculture has contributed to the decline in population of many of the agricultural communities, but the new technology in the wind energy generation has a chance to reverse this trend. Last week I had a conversation with three young men in their mid 30's that were born and raised in Sherman and Wasco Co. They are presently living in Wamic and are building fence for a living. The individual who has the fencing business is discouraged because the only jobs he can make money on are the ones subsidized by the government, and he is running out of those. The other two men that have been working with him both 35 years old, just signed up with the National Guard because that was the best job opportunity they could find. Another man in his 50's who works with them, hasn't found a good steady job since the mills closed in Maupin and Tygh Valley. These are just a few examples of many.

In general, there is overwhelming support for wind energy development in south and central Wasco Co. It's my understanding that the attitude of certain areas of north Wasco Co. is somewhat different. I have been told that the Commissioners are receiving petitions to increase the distance for setbacks. A large number of land owners and residents in the rest of the county have a conflicting opinion. Many would like to see a less restrictive setback rule. Restrictive setback regulations could seriously effect the wind development and may eliminate the

commercial wind energy development in Wasco Co. I personally attended a Shaniko City Council meeting ~~last night~~, and every member attending signed a petition favoring a more relaxed setback standard. I find it quite offensive, in terms of property rights, that I would not be allowed to place a wind tower in closer proximity to my residence than is now being considered. I live in a very rural area, and if I could elect to site a wind tower in my back yard it would effect no one but myself, and would satisfy the current setback in relation to all others. Perhaps the residents of Shaniko would like to site a tower in their urban development area to generate income for the town. I wonder which would be more noticeable, the trucks passing through town all night or the wind turbines? Wasco Co. has already permitted a large wind project. The Summit Ridge project. As I understand it, that project was permitted through the State and Wasco Co. adopted the State standards in regards to setbacks and other aspects of the permitting process.

I'll be the first to acknowledge that wind turbines will alter the landscape. Dams, bridges, highways, cities, towns, vehicles, trains, power lines, clear cuts, farm fields, airplanes, strip mining, hilltop removal, oil fields (off shore or on), industry smoke stacks, etc.,etc. All of these things alter the landscape, but we have adapted to, or accepted them to accommodate our lifestyle. It seems everything in life has trade offs. In consideration of our environment, we need to ask ourselves what is the least damaging way we can create the energy we need. I think you will be hard pressed to find an energy resource more environmentally friendly than wind turbines.

There are those who are apposed to wind energy because it is tax subsidized. Let's not forget that all the hydro electricity we enjoy now was completely financed with Government money. All the dams, power lines, the locks systems, etc., that compose the BPA system, all payed for with tax payer dollars. The oil, coal, and natural gas industry, which have billions of dollars in profits every year, have received tax subsidies for several decades. The subsidies for wind are insignificant by comparison. I'm 63 years old and as long as I can remember Local, State, and Federal dollars have played a major role in our Local economy.

In regards to health and safety, the Oregon Environmental Protection Agency already has good scientifically based set back standards in place for noise and light flicker. There is no need for Wasco Co. to duplicate or add another layer of permitting requirements on top of the State. Many health effects due to wind turbines are unsubstantiated, and studies have not indicated any connection.

I support adopting the State setback standards and eliminating the duplication and extra layering of regulations to the permitting process in Wasco Co.

Perhaps a compromise would offer a solution to the apparent conflict of opinions.

I would agree that there are areas that are more sensitive to wind turbines. It is my opinion that different areas of the county could adopt different standards in regards to wind turbines.

Thank you for the opportunity to comment on this important issue.

Fred Justesen

WIND ENERGY MENU

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- Fact Sheets
- Supply Chain
- Windy Myths
- Small Wind Energy
- Friends of Wind
- Opportunities
- Education
- Links & Resources

Wind Energy

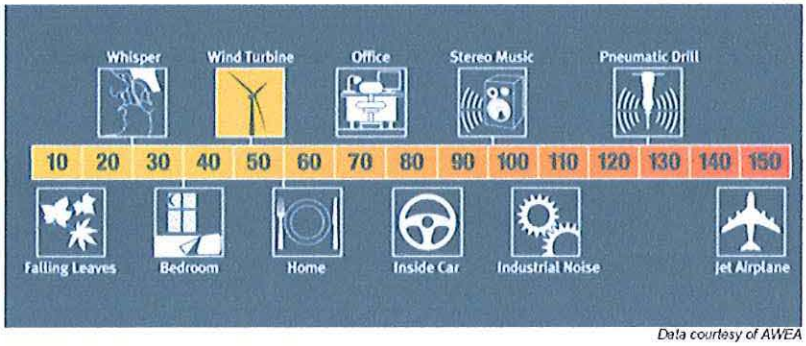
home > wind energy

Windy Myths: Get the Facts

You may hear a myth or two about wind power, and these are based on misunderstandings and old technology. CanWEA gives you the facts on the most common myths.

Myth: Wind farms are noisy.

Fact: The evolution of wind farm technology over the past decade has rendered mechanical noise from turbines almost undetectable with the main sound being the aerodynamic swoosh of the blades passing the tower. There are strict guidelines on wind turbines and noise emissions to ensure the protection of residential amenity. The best advice for any doubter is to go and hear for yourself! Click here to download the decibels chart in PDF.



Data courtesy of AWEA

Myth: Wind farms won't help climate change.

Fact: Wind power is a clean, renewable source of energy which produces no greenhouse gas emissions or waste products. Power stations are the largest contributor to carbon emissions. We need to switch to forms of energy that do not produce CO2. Just one modern wind turbine will save over 4,000 tonnes of CO2 emissions annually.

Myth: Wind farms kill birds

Fact: Today, the wind energy industry has put procedures in place to enhance our understanding of birds and how they interrelate with wind turbines. The modern wind farm undergoes a series of environmental assessments before being approved. In this process, the proposed site will be monitored and bird populations evaluated. What kinds of birds are on site? What are their habits, flight patterns? Do they nest in the area or simply fly through? Questions like these are answered in an effort to better understand on-site bird populations and to mitigate their potential interactions with wind turbines. Once built, further monitoring takes place to better understand the ongoing relationship between birds and the wind farm.

A real concern for birds is noted in the 2004 study in Nature that estimated that up to a quarter of all bird species could become extinct by 2054 due to global climate change, for which wind energy is one of the solutions.

Myth: Wind farms are dangerous to humans.

Fact: Wind energy is a benign technology with no associated emissions, harmful pollutants or waste products. In over 25 years and with more than 68,000 turbines installed around the world, no member of the public has ever been harmed by wind turbines. In response to recent unscientific accusations that wind turbines emit infrasound and cause associated health problems, Dr Geoff Leventhall, Consultant in Noise Vibration and Acoustics and author of the Defra Report on Low Frequency Noise and its Effects 16, says: "I can state quite categorically that there is no significant infrasound from current designs of wind turbines. To say that there is an infrasound problem is one of the hares which objectors to wind farms like to run. There will not be any effects from infrasound from the turbines."

Myth: Building a wind farm takes more energy than it ever makes.

Fact: A wind turbine produces enough clean electricity in 3 to 5 months to offset all of the greenhouse gas emissions emitted in its manufacture – and it will produce clean electricity for another 20-25 years. This compares favourably with coal or nuclear power stations, which take about six months. A modern wind turbine is designed to operate for more than 20 years and at the end of its working life, the area can be restored at low financial and environmental costs.

Myth: Wind farms are inefficient, they are only operational 30% of the time.

Fact: A modern wind turbine produces electricity 70-85% of the time, but it generates different

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outputs dependent on wind speed. Over the course of a year, it will generate about 30% of the theoretical maximum output. This is known as its load factor. The load factor of conventional power stations is on average 50%. A modern wind turbine will generate enough to meet the electricity demands of more than a thousand homes over the course of a year.

Myth: Wind energy needs back-up to work.

Fact: All forms of power generation require back up and no energy technology can be relied upon 100%. Variations in the output from wind farms are barely noticeable over and above the normal fluctuation in supply and demand, seen when the nation's workforce goes home, or if lightning brings down a high-voltage transmission line. Therefore, at present there is no need for additional back-up because of wind energy.

Myth: Wind power is expensive.

Fact: The cost of generating electricity from wind has fallen dramatically over the past few years. Between 1990 and 2002, world wind energy capacity doubled every three years and with every doubling prices fell by 15%. Wind energy is competitive with new coal and new nuclear capacity, even before any environmental costs of fossil fuel and nuclear generation are taken into account. As gas prices increase and wind power costs fall - both of which are very likely - wind becomes even more competitive, so much so that some time after 2010 wind should challenge gas as the lowest cost power source.

Furthermore, the wind is a free and widely available fuel source, therefore once the wind farm is in place, there are no fuel or waste related costs.

Myth: We should invest in other renewable energy technologies and energy efficiency instead of wind power.

Fact: Wind energy's role in combating climate change is not a matter of either-or. We will need a mix of new and existing renewable energy technologies and energy efficiency measures, and as quickly as possible. Wind energy is the most cost effective renewable energy source available to generate clean electricity and help combat climate change right now. Furthermore, developing a strong wind industry will facilitate other renewable technologies which have not reached commercialisation yet, accumulating valuable experience in dealing with issues such as grid connection, supply chain and finance.

Myth: Wind farms should all be put out at sea.

Fact: At present, onshore wind is more economical than development offshore. However, more offshore wind farms are now under construction in other countries, Offshore wind farms take

longer to develop, as the sea is a more hostile environment. To expect offshore to be the only form of wind generation allowed would therefore be to condemn us to missing our renewable energy targets and commitment to tackle climate change.

Myth: Wind farms are ugly and unpopular.

Fact: Beauty is in the eye of the beholder, and whether you think a wind turbine is attractive or not will always be your personal opinion. However, studies regularly show that most people find turbines an interesting feature of the landscape. On average 80% of the public support wind energy, less than 10% are against it, the remainder are undecided. Surveys conducted near existing wind farms have consistently found that most people are in favour of wind energy.

Some of this information excerpts from www.embracewind.com

© 2008 Canadian Wind Energy Association (CanWEA)

To the Wasco County Commissioners,
re: WCLUDO Chapter 19

March 15, 2012

I am commenting on proposals to Chapter 19, the Energy Chapter of Wasco County's Land Use and Development Ordinances (WCLUDO) specifically regarding industrial wind turbine setbacks from legal residences. I fully support 2 mile setbacks between legal residences and industrial wind turbines in all resource and non-resource zones. This would include NO waivers in non-resource zones, and a variance/waiver option allowed in resource zones.

In a recent 2011 Oregon Land Use Board of Appeals case, Cosner vs.Umatilla County, evidence was revealed that these two-mile setbacks are necessary to protect the people in these residences from the impacts of the noise produced by the huge industrial wind turbines. The OR LUBA ruled that there is more than sufficient testimony and factual evidence to prove that there is indeed significant noise impact for at least a two mile radius around each industrial wind turbine, and that these two-mile setbacks are absolutely necessary to protect residents from this noise and health threat.

This OR LUBA ruling sets an important precedent statewide concerning wind turbine setbacks and clearly needs to be observed and implemented by ALL counties in Oregon. The noise impact on health is the same issue no matter where the turbines might be, so this ruling of the OR LUBA on this issue must be adhered to by everyone equally.

Since it is the goal of WCLUDO's Chapter 19 to protect the health, safety and welfare of Wasco County citizens and to protect the resources identified by the Wasco County Comprehensive Plan, as well as to protect property values and investments by preventing conflicts and incompatible uses, then providing the two mile setbacks would ensure that these goals are met. It is totally inconsistent and incompatible to place such intrusive and negatively impacting industrial operations within 2 miles of any rural residences. Property values plummet where there is even a suggestion of an industrial wind power project and often land/homes adjacent to industrial wind power projects cannot be sold at any price.

Additionally, in a document recently released on January 3, 2012 by the Oregon Public Health Division's Office of Environmental Public Health, entitled "Strategic Health Impact Assessment on Wind Energy Development in Oregon", it was stated that "Sound from wind energy facilities in Oregon could potentially impact people's health and well-being if it increases background sound levels by more than 10 dBA." (p.51) This document states that "There is some evidence that wind turbine sound is more noticeable, annoying and disturbing than other community or industrial sounds at the same level of loudness." (p.6,49)

It further states that "the potential impact from wind turbine sound could range from moderate disturbance to serious annoyance, sleep disturbance and decreased quality of life. Chronic stress and sleep disturbance could increase risks for cardiovascular disease, decreased immune function, endocrine disorders, mental illness and other factors."(p.51)

It is now well known throughout the world that this "Wind Turbine Syndrome" is a real and present health threat to humans and other living creatures, and this has been well documented by Dr. Nina Pierpont in her recent book, "Wind Turbine Syndrome" as well as by countless other scientists, doctors and people living adjacent to these massive machines. This is an established fact that can no longer be debated or ignored by the wind power industry and their lawyers, but can be conclusively observed and understood with only a mere 5 minutes of research on the subject.

If a Wasco County resident chooses to have an industrial wind turbine less than two miles from their home, than a waiver should be available for them to do so only if all the affected neighbors within that two-mile radius also agree to such a waiver. I feel certain that Wasco County does not want to put itself in the position of facing many future, costly lawsuits from people who can prove that their health has been adversely affected by the noise from these industrial wind turbines.

Additionally I also urge the Wasco County Commissioners to support strong protection for the Columbia Gorge National Scenic Area in all respects. It is vital to the well-being, integrity and prosperity of Wasco County to defend these values and stated provisions.

Thank you for your attention,

Sincerely,

Jill Barker
P.O. Box 572
Mosier, OR 97040

541-478-3427
jilbrkrb@aol.com

June 28, 2011

John Roberts, Planning Director
Wasco County Department of Planning and Economic Development
2705 East Second Street
The Dalles, Oregon 97058

Dear Director Roberts,

We, the signers below, are expressing our concerns regarding the recent Planning Commission Quasi Judicial hearings of May 3rd and June 7th. We take exception to the process used which affected the deliberations and final recommendation to the BOCC.

At the beginning of both hearings, the Chairman stated the rules for public testimony, which included a time limitation of 6 minutes (changed to 5 minutes on June 7th) and the requirement that those who testified on May 3rd could only speak first in order on June 7th and only address new information. The Commission did not follow these stated rules. The rules were selectively enforced with some people allowed to speak for 8 or 9 minutes while others were told to wrap it up after 5 minutes. The order of testimony rule was not observed. Brian Walsh of Iberdrola was allowed to speak at the end of the hearing on June 7th even though he also spoke on May 3rd.

It was also stated that this would not be a question and answer period. This rule was not applied to Stoel Rives Attorney Elaine Albrich or Brian Walsh. Both of them also exceeded the stated time period for testifying (Elaine Albrich spoke 10 ½ minutes on June 7th including answering a question from the Chair and Brian Walsh spoke for 8 minutes out of turn). He was also allowed to make comments from the audience during deliberations.

Elaine Albrich's comments at the May 3rd meeting were incorporated into the revision of the proposed Chapter 19 ordinance for the June 7th meeting while written and oral comments submitted by other people weren't. This was done by the direction of the Chair without Commission deliberation or direction. In addition, Elaine Albrich was a member of the steering committee that developed the Chapter 19 energy ordinance update. It would seem that she had had ample time to provide input earlier but at both hearings was able to reinsert her viewpoints into the proposed ordinance.

Was Elaine Albrich the legal counsel for the Commission? The Chair asked her for her legal opinion or advice at both hearings. There were other attorneys present in the audience.

On May 3rd David Neikirk proposed an exclusion area in the forest zone for Wasco Butte as a possible solution. The Commission Chair asked Elaine Albrich how that could be done. She implied that the present discussion was not the appropriate time or place for such a consideration. Chapter 19 addresses certain setbacks and different zones. Isn't dealing with these types of issues a function of

Wasco County staff and Commission? There was no further consideration given to pursuing David Neikirk's suggestion.

During PC deliberations of June 7th the Chair asked staff for clarification of the State's EFSC standards. In the revised form of Chapter 19 presented on June 7th, staff presented as an EFSC standard a setback of 1320 feet between residences and wind turbines, which was a change from May 3rd from a setback of "approximately 1600 feet." Staff and steering committee worked for over one year but this state EFSC standard was only put forth in the final rewrite and presented at the hearing of June 7th. It seems logical that any such standard should have surfaced earlier in the process considering the planning staff and steering committee were directly connected to the Oregon State Department of Energy staff (Adam Bless, Tom Stoops, Todd Cornett) and EFSC.

When asked for clarification of the State's EFSC standards, staff deferred to Elaine Albrich and she was allowed to speak again after public comment had closed. Her comments were incomplete and misleading with no mention of the required noise waivers. We were given no opportunity to refute her. In fact there is no EFSC standard for setbacks. The distance of 1320 feet that she made reference to was only allowed with a noise waiver to comply with DEQ OAR 340 and to address a safety issue of blade fragmentation and ice throw. The resident in this case was the landowner and lease holder. Elaine Albrich made no mention of noise waivers whatsoever.

Commission members based their decision upon the concept of not wanting to be more restrictive than the state. However, the state EFSC generally defers to existing ordinances that cities and counties have in place. Umatilla County uses a two mile setback. The City of Wasco in Sherman County has a one mile setback.

Two commissioners stated that all citizens' testimony supporting one mile setbacks was from people living in non-resource zones. In fact, the exact opposite was true. There was no testimony from anyone living in a non-resource zone on June 7th.

The deliberations of the Commission were confusing to those citizens in attendance. Everyone left with a different opinion as to the setbacks established by Commission. ¼ mile, 3520 feet, and ¾ mile were discussed without clear reference as to which zone these numbers applied to. Four of the seven Commissioners said they would support a ¾ mile setback for the resource zone yet the vote taken was for 3520 feet (about 5/8 mile) with no explanation of the conversion of feet to miles. It appeared that they erroneously assumed that ¾ mile was 3520 feet. Was it even clear to the Commissioners what they were voting on?

All of the above leads us to believe that the recommendations reached were made with inaccurate and incomplete information. In fairness we ask that the Commission uniformly enforce its own rules without bias. We would appreciate a written response to our concerns.

Sincerely,

Signers:

Phil Swaim

Sheila Dooley

Jill Barker

Charles Barker

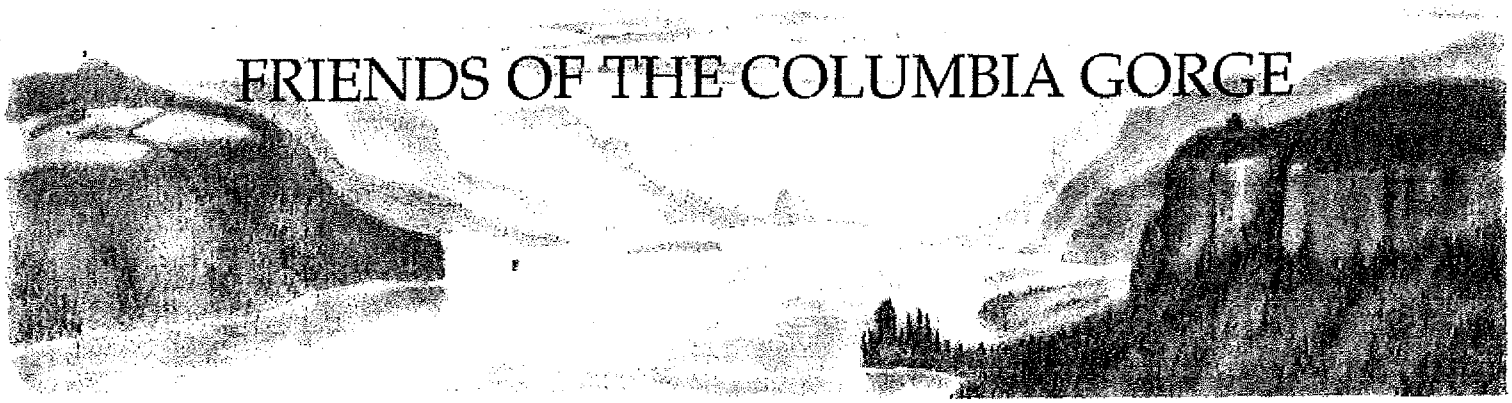
Douglas Harrison

Joseph A. Mosca

David Neikirk

Sheila M. Marsh

CC: Wasco County Board of Commissioners



SUBMITTED VIA E-MAIL AND FIRST-CLASS MAIL

July 21, 2011

Wasco County Board of County Commissioners
c/o Wasco County Department of Planning and Economic Development
2705 East Second Street
The Dalles, Oregon 97058
ScottH@co.wasco.or.us
SherryH@co.wasco.or.us
RodR@co.wasco.or.us

Re: Factual corrections related to the Wasco County Planning Commission Hearings on the proposed Comprehensive Plan Amendments and Chapter 19 (energy ordinance) Updates.

Dear Commissioners:

Friends of the Columbia Gorge attended both Planning Commission Hearings on the proposed energy ordinance updates, submitted written comments at both hearings, and submitted oral comments at the second hearing. Friends submits this letter to correct factual errors presented at those hearings related to Oregon Energy Facility Siting Council (EFSC) standards for setbacks from residences. The Planning Commission relied on incomplete and misleading testimony regarding EFSC setbacks during its deliberations. This likely led to a recommendation for substantially smaller setbacks than what has effectively been implemented by EFSC.

During the June 7, 2011 Planning Commission deliberations the Planning Commission allowed representatives of the wind energy industry to provide additional comments during the Planning Commission's deliberations. This included comments from a representative of Iberdrola Renewables, a wind energy facility developer with projects in development in Wasco County. This also included comments from Elaine Albrich of the Stoel Rives law firm, which represents the wind energy developers that would be subject to the final ordinance. While inviting industry representatives to speak, the Planning Commission did not give the public an opportunity to respond to these comments. The Planning Commission proceeded to base its deliberations on the incomplete facts provided by the industry representatives.

The comments from industry representatives misconstrued substantive information that was critical to the Planning Commission's deliberations. Specifically, Ms. Albrich provided partial information regarding EFSC requirements for setbacks from residences. The Commission had sought guidance on EFSC's standards for establishing setbacks from residences. The Commission deliberations were focuses on addressing a broad range of impacts to residential uses, including impacts from noise, shadow flicker, compatibility with residential uses, and other effects of wind energy facilities. Ms. Albrich argued that EFSC has adopted a setback 1,320 feet from residences to protect public health and safety. However, EFSC's prior adoption of a 1,320-foot-setback was intended exclusively to address the risk associated with turbine failure and blade throw. EFSC's Final Order for the Shepards Flats Wind Farm is very clear on this point: "A quarter-mile safety setback (1,320 feet) provides a margin of safety beyond the maximum reported throw distance of 984 feet for a blade fragment." Sheppards Flat Wind Farm Final Order at 24 (attached).[1] This context was never provided to the Planning Commission, which proceeded to assume that EFSC's 1,320-foot turbine failure setback was used to address the broad range of potential conflicts with residential uses.

EFSC's 1,320-foot safety-setback did not address impacts from noise (neither health impacts nor nuisance issues), compatibility with residential uses, shadow flicker, impacts from nighttime lighting, or any other impact that is commonly used to justify setbacks from a residence. In practice, EFSC commonly applies larger setbacks from residences to prevent impacts from noise. These larger buffers are based on state-mandated noise regulations found in OAR 340-035-0035. These noise buffers can require wind facilities to be sited over 1.5 miles from residences. EFSC also allows wind facility developer to obtain waivers from affected landowners in order to reduce this buffer. To the extent the Planning Commission sought to follow EFSC's lead in adopting setbacks from residences, the Planning Commission would have been justified in adopting setbacks over 1.5 miles from residences. However, these critical facts were never presented to the Planning Commission during the discussion of setbacks.

For background, one of EFSC's noise standard is the "ambient degradation" test, which prevents a wind facility from creating noise in excess of 10 decibels of ambient levels. Developers are allowed to assume 26 decibel ambient noise levels in rural areas. In practice this creates a 36 decibel cap on noise that can be heard at rural residences.[2] However, actual ambient noise levels in parts of rural Wasco County could be as low as 20 decibels, which would cap noise at levels

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[1] Notably, the Commission has previously asked whether turbine failure was common and haw far from adjacent property lines, roads, and structures turbines should be placed to prevent turbine parts from falling on adjacent structures. Instead of adopting EFSC's 1,320-foot-safety margin, the Planning Commission recommend substantially smaller setbacks.

[2] The "ambient degradation" test requires that facilities "not increase the ambient hourly . . . noise levels at any noise sensitive receiver by more than 10 decibels." Sheppards Flat Wind Farm Final Order (SFWF) at 132. For the ambient degradation test the project developer can either assume a 26 decibel ambient noise or measure the actual noise. Most projects reviewed by EFSC have assumed a 26 decibel ambient noise level. This creates a 36 decibel threshold for the "ambient degradation test." EFSC also applies a "maximum allowable" test, which requires that facility "not exceed an hourly . . . noise level of 50 dBA at any noise sensitive receiver." SFWF at 133. A developer is not allowed to obtain waivers from this standard.

as low as 30 decibels. With the right conditions a wind facility could potentially exceed 30 decibels up to 2 miles from a wind facility. Again, developer can obtain a waiver to exceed this cap. Based on EFSC guidance and ambient noise levels in the County, the BOCC can easily justify a 2 mile setback if a waiver process is included.

Importantly, since developers can assume a 26 decibel ambient noise level, residences with lower ambient noise levels are given the burden of proving that a development would violate the "ambient degradation" test if their actual ambient noise levels are below 26 decibels. The citizens of Wasco County generally do not have access to the professional consultants employed by the wind industry. As such, they are placed at a severe disadvantage if they attempt to challenge the industry's noise analysis. Instead of requiring citizens to hire expert consultants, the more balanced approach would employ larger setbacks and include a process for obtaining waivers.

In sum, the Planning Commission relied on incomplete information provided by industry representatives. This information was biased towards industry interests and led to Planning Commission's recommendations based on false assumptions. The BOCC must recognize the biased information underlying the Planning Commission's recommendations and take corrective action.

Friends encourages the BOCC to adopt a setback of 1.5- to 2-miles, with a waiver process to allow development as close as 1,320 feet, which would mirror EFSC's standard to protect residences from turbine failure and blade throw. Setbacks mirroring EFSC's actual process, with a waiver process, would protect residents while not substantially reducing the supply of land in Wasco County that is suitable for commercial energy development.

Sincerely,

Richard F. Till
Conservation Legal Advocate

3-20-12

Wasco County Commissioners

I want to address the setback distance proposed in the resource zones: 3520 feet.

3520 feet, 2/3 of a mile is the distance from turbines to a boundary zone line used in Gilliam County. Ibertrola's Leaning Juniper II Project had to secure about a dozen waivers from residents in Arlington to comply with DEQ noise regulations.

On June 7, 2011 the Wasco County Planning Commission was influenced by an opinion presented as fact from industry representatives that the State Energy Facilities Siting Council had a ¼ mile setback standard. This clouded the final recommendation because 2 commission members did not want to be more restrictive than the state rules.

Before the vote 4 members (a majority) supported ¾ miles of a mile setback, but lost in converting fractions to feet, 3520 feet 2/3 mile was the distance settled on, but only after a followup email vote.

The issue of a state EFSC setback standard has not allowed a fair consideration of safe setbacks, as people claimed Wasco County's rewrite of Chapter 19 is proposing greater setback distances than the state requires.

From my first encounter with EFSC in 2007 until my last on February 3, 2012, EFSC staff as always stated there are no setback standards but the DEQ noise regulations. But until last week the Wasco County Planning website still said there was a quarter mile EFSC standard.

90% of the time wind turbines will be over the DEQ noise regulations with a setback of 3250 feet.

At ¾ mile setback proposed for urban boundaries, still the DEQ noise regulations will not be met in most instances, especially with the larger turbines of 2.3 or 3.0 megawatts. Overall setback distances have increased in wind friendly Sherman County. The City of Wasco has a 1 mile setback.

With an adjustment process to allow closer setback of turbines to residences, a greater setback distance should not be a problem.

Attachment A, Page 23: What is proposed concerning adjustments seems ambiguous and open to interpretation. The conditions need to definitively state that an adjustment to establish a waiver for lesser setback distance is mandated by specific written permission from the affected property owner before any other consideration and factors be pursued.

The 2 following paragraphs that have been struck through present a clearer understanding of intent and meaning, and should remain in the ordinance.

Please keep these points in mind and consider the evidence presented by New Zealand, Minnesota, Great Britain, and numerous studies from Europe, all that conclude greater setbacks eliminate conflict and issues of wind turbine noise within the community.

Thank you.

Phil Swaim

P.O. Box 674

The Dalles, Oregon 97058

Wind/Energy Ordiance Hearing May 20

jsilver@rconnects.com <jsilver@rconnects.com> Mon, Mar 19, 2012 at 2:32 PM
To: "wcplanning@co.wasco.or.us" <wcplanning@co.wasco.or.us>

To: Wasco County Commission
Re: Wind/Energy Ordinance Hearing

March 19, 2012

From:John Silvertooth
PO Box 68
Antelope, Or. 97001

To the Commissioners:

Looking at the weather I'm not sure we can get up there Monday morning considering out situation down here so I am going to submit written comments. We have to get out of here pretty early to get there by 8:00 am. Do you know there are five county seats closer to us than the Dalles?

Lighting, WCLUDO 19.030.D.1.a(3)

I strongly support requiring the radar triggered lighting as proposed and would mandate it if at all possible. This is one thing when I talk to people down here they all support because even people that are "gung-ho" on the wind turbines don't want a sea of red flashing lights hanging over our little town. I believe this would be consistent with state land use goals, especially Goal 5 and that is justification to require these systems.

I was surprised to see that E-On opposes this because the systems are "new and relative untested." Mr. Greczyn seems like a very bright young man and I thought he made a excellent presentation for E-On in Shaniko. On this one though I say come on boys- we thought you were the edge of technology genius level operators that were going to save the planet- and you are afraid of some new technology?

Setbacks

I addressed this is an earlier statement and incorporate that to support a five mile set back from city limits. The proposed residential set backs of 1.5 or 2 miles IMHO are modest and conservative and I support those but as I read the proposed WCLUDO those do not protect our homes in Antelope since we are not "resource land," "non-resource land" or within any proposed project boundaries. So the "city limit" set-backs are the only ones that protect a city dwellers homes. (If I stand to be corrected on this perhaps someone can explain the alternative interpretation and what the conclusion is.)

This brings me to the question of waivers. This is one reason I oppose the waivers, especially the provision that would allow a city to issue waivers.

Perhaps I am jumping ahead but my conclusion is then that the city dwelling home-owner is likely the least protect and then stripped of any individual right to determine waiver issues. This means you are assigning greater rights and consideration to homeowners outside of cities and denying equal rights to city dwellers who are essentially the same class of persons. This is a bad idea.

Waivers

It seems to me that Cosner v. Umatilla Co. from LUBA should have put an end to this issue. Therefore, we have Stoel Rives on behalf of Iberdrola proposing what their attorney Elaine Albrich pretty much stated at the last hearing was drafted to get around Cosner and that Cosner was wrongly decided and she wished she could have

made the arguments. So she may be right and this may be her chance to make her arguments. I would never underestimate Stoel Rives for a minute I tell you that and they only hire the best so I'm sure Albrich is one "smart cookie" for sure. However, I would adopt the reason and conclusions in Cosner and argue that the same principles apply regard the Stoel Rives proposed amendments.

As I said before I am especially concerned about the provisions that would allow a city to issue a waiver for the reasons I set forth above. Since those waivers effect at least some of the property owners in the city they really have the force of law. This seems to me that this is not a legal delegation of powers to the city by the county and they county has no authority to grant the city legislative powers, especially legislative powers outside of the city boundaries when the city is acting not as a private land-owner . The county can not grant legislative powers or delegate their legislative powers to cities and that's what that provision does.

COMMENT ON THE LAST HEARING

I thought that Mr. Cornutt made a very good neutral presentation about the law and the process. He clearly stated that EFSC does not have a uniform set-back standard. I had been told otherwise by someone who considers themselves "in the know" so I thought that was very good information.

Therefore, it was kind of hard to understand why the witnesses (who seem to be primarily people who have leased their land to Iberdola and E-On) kept saying that they supported the state standards. I guess their statements must have been written in advance. Then one pro-wind gentlemen at the end seemed to say he favored that set backs be set for each tower individually. I could get behind that being an attorney I would say that was the environmentalist vivid dream. Then the last wind-advocate asked questions of Mr. Cornutt and I had to wonder if he had been there at all and how he could be tracking anything.

While I would give most of the pro-wind speakers great grades for delivery and bravado but really most of the speeches were a little heavy on political spin and self-aggrandizement to really help move the debate down the road. Iberola and E-On get their money's worth for the staff that put that together. I was so hoping that something conciliatory toward the set-back advocates indicating that they would be willing to settle for 98% and not want the whole enchilada or my way or the highway.

One thing that I notice is that the only setbacks in the proposed ordinance that they seem to object to are the ones that related to residential housing. We see other set backs and they don't get indignant about their supposed property rights about those set-backs. I guess that the poor little homeowners are the ones the feel they can step on with immunity.

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Now one of our ranch-owners down here is that's tied into E-On, Walt Wells. He's a very successful businessman who I understand is rather diversified around the state, who bought Earl Smith's ranch. One day in the Antelope Cafe I overheard Mr. Wells say that he believed in the 'Golden Rule, that was them who have the gold make the rules."

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Wind/Energy Ordiance Hearing May 20

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Re: Wind/Energy Ordiance Hearing MARCH 20

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To: jsilver@rconnects.com
Cc: wcplanning@co.wasco.or.us

Please note the correct hearing date is March 20 (Not May 20 as stated in my first email.

On 19.03.2012 14:32, jsilver@rconnects.com wrote:

To: Wasco County Commission
Re: Wind/Energy Ordinance Hearing

March 19, 2012

From:John Silvertooth
PO Box 68
Antelope, Or. 97001

To the Commissioners:

Looking at the weather I'm not sure we can get up there Monday morning considering out situation down here so I am going to submit written comments. We have to get out of here pretty early to get there by 8:00 am. Do you know there are five county seats closer to us than the Dalles?

Lighting, WCLUDO 19.030.D.1.a(3)

I strongly support requiring the radar triggered lighting as proposed and would mandate it if at all possible. This is one thing when I talk to people down here they all support because even people that are "gung-ho" on the wind turbines don't want a sea of red flashing lights hanging over our little town. I believe this would be consistent with state land use goals, especially Goal 5 and that is justification to require these systems.

I was surprised to see that E-On opposes this because the systems are "new and relative untested." Mr. Greczyn seems like a very bright young man and I thought he made a excellent presentation for E-On in Shaniko. On this one though I say come on boys- we thought you were the edge of technology genius level operators that were going to save the planet- and you are afraid of some new technology?

Setbacks

I addressed this is an earlier statement and incorporate that to support a five mile set back from city limits. The proposed residential set backs of 1.5 or 2 miles IMHO are modest and conservative and I support those but as I read the proposed WCLUDO those do not protect our homes in Antelope since we are not "resource land," "non-resource land" or within any proposed project boundaries. So the "city limit" set-backs are the only ones that protect a city dwellers homes. (If I stand to be corrected on this perhaps someone can explain the alternative interpretation and what the conclusion

is.)

This brings me to the question of waivers. This is one reason I oppose the waivers, especially the provision that would allow a city to issue waivers.

Perhaps I am jumping ahead but my conclusion is then that the city dwelling home-owner is likely the least protect and then stripped of any individual right to determine waiver issues. This means you are assigning greater rights and consideration to homeowners outside of cities and denying equal rights to city dwellers who are essentially the same class of persons. This is a bad idea.

Waivers

It seems to me that Cosner v. Umatilla Co. from LUBA should have put an end to this issue. Therefore, we have Stoel Rives on behalf of Iberdrola proposing what their attorney Elaine Albrich pretty much stated at the last hearing was drafted to get around Cosner and that Cosner was wrongly decided and she wished she could have made the arguments. So she may be right and this may be her chance to make her arguments. I would never underestimate Stoel Rives for a minute I tell you that and they only hire the best so I'm sure Albrich is one "smart cookie" for sure. However, I would adopt the reason and conclusions in Cosner and argue that the same principles apply regard the Stoel Rives proposed amendments.

As I said before I am especially concerned about the provisions that would allow a city to issue a waiver for the reasons I set forth above. Since those waivers effect at least some of the property owners in the city they really have the force of law. This seems to me that this is not a legal delegation of powers to the city by the county and they county has no authority to grant the city legislative powers, especially legislative powers outside of the city boundaries when the city is acting not as a private land-owner . The county can not grant legislative powers or delegate their legislative powers to cities and that's what that provision does.

COMMENT ON THE LAST HEARING

I thought that Mr. Cornutt made a very good neutral presentation about the law and the process. He clearly stated that EFSC does not have a uniform set-back standard. I had been told otherwise by someone who considers themselves "in the know" so I thought that was very good information.

Therefore, it was kind of hard to understand why the witnesses (who seem to be primarily people who have leased their land to Iberdola and E-On) kept saying that they supported the state standards. I guess their statements must have been written in advance. Then one pro-wind gentlemen at the end seemed to say he favored that set backs be set for each tower individually. I could get behind that being an attorney I would say that was the environmentalist vivid dream. Then the last wind-advocate asked questions of Mr. Cornutt and I had to wonder if he had been there at all and how he could be tracking anything.

While I would give most of the pro-wind speakers great grades for

delivery and bravado but really most of the speeches were a little heavy on political spin and self-aggrandizement to really help move the debate down the road. Iberola and E-On get their money's worth for the staff that put that together. I was so hoping that something conciliatory toward the set-back advocates indicating that they would be willing to settle for 98% and not want the whole enchilada or my way or the highway.

One thing that I notice is that the only setbacks in the proposed ordinance that they seem to object to are the ones that related to residential housing. We see other set backs and they don't get indignant about their supposed property rights about those set-backs. I guess that the poor little homeowners are the ones the feel they can step on with immunity.

As a lawyer you learn when one goes to court we that one generally needs to rely on the law and the cases- those are enactments of the legislature and rulings of the court and perhaps common law.

There are other natural laws of course. For example, if you don't drink water you will die. You can't get a piece of paper from the government that says you can live even if you don't drink water (well you might get one but it's no good.)

One of the laws I would like to see enforced in one of our older laws which is "Do unto others as you would have them do unto you." See you can't enforce that one it court. I think they call that the Golden Rule. That's the law I wish we could have decide this case.

Now one of our ranch-owners down here is that's tied into E-On, Walt Wells. He's a very successful businessman who I understand is rather diversified around the state, who bought Earl Smith's ranch. One day in the Antelope Cafe I overheard Mr. Wells say that he believed in the 'Golden Rule, that was them who have the gold make the rules."

So our property rights are wonderful rights and I enjoy and cherish them. And "long may they wave." Our society places restrictions on them and we always have and I'm sure those here arguing for their rights (well their former rights if they have leased them- now the rights of E-On and and Iberdrola) would not argue for complete anarchy in land-use.

In our society if everyone exercised their rights to the fullest it would create a call for limits. For example, the so-called church that demonstrates at family funeral of our veterans ruining the family's sacred moments for politics. They are within their rights but they are a menace.

Undoubtedly these land-owners have a right to be bad neighbors as well and they seem intent on insuring that they are.

I have a feeling the Golden Rule that will prevail is the rule "Those that have the gold make the rules." Rather than "Do unto others as you would have them do unto you.

Renewable energy is key to our survival but it seems the models supported by the state and huge utilities mistakenly rely on the

models of centralized generation that have contributed to high costs and expanding corporate globalism.

E-On (German- world's largest private utility) and Iberdrola, S.A. (Spanish- world's 4th largest electricity conglomerate) are global players- E-On operates in some 30 countries and Iberdrola, S.A. in some 40 countries. These are not just wind power companies but are heavily and primarily invested in many other forms of energy including nuclear and coal. They are here in the U.S. because of the opportunity to lock up our resources and exploit wind power subsidies. Both are intangled in the economy of all of Europe and the ownership of both is by the largest economic concerns in Europe. Here is Iberdola SA own web site detailing significant investors:

https://www.iberdrola.es/webibd/corporativa/iberdrola?IDPAG=ENWEBACCCAPITALCAPARSIGN

Take as much time as you need to get this right as I am sure the commission will.

This year Oregon celebrates the 100th anniversary of the birth of Tom McCall. Think about that.

I hope we find harmony in our community.

County Commissioners, County planners and County citizens.

I am Blaine Carver and am a lifelong resident of Wasco County, My wife and I recently purchased a small farm in the Bakeoven area of south Wasco county. We both work outside of our personal farming operation to support our goal of living and raising a family in rural south county.

Growing up in Wasco County I have watched the businesses and farms come and go. I attended school through the years when the timber tax revenue dried up. It is very exciting that there is a new green and sustainable industry that is interested in our incredible wind resource. The wind energy business has an incredible track record for the environment and human health. This is the opportunity that will help me and others stay on the land and in our county.

The added tax revenue will benefit all public services and the county economy as a whole. It will insure that our children receive a better education and have more opportunities than they currently do. It will inspire other young people to stay and build businesses and families. Wind development will provide additional jobs in a sustainable green industry as well as an added influx of revenue into the local economy. What is not to love about this opportunity?

Wind turbines do alter the landscape and yes if you stand next to one and listen carefully you can hear it. We currently derive our electricity from fossil fuels and hydro dams. I would like someone to look me in the eye and tell me that doesn't alter the landscape. It is astounding to me that anyone thinks wind turbines are more obtrusive or dangerous than pollution and dams.

The issue at hand boils down to, "Does the county want wind turbines and the benefits that come with them?" Modern wind turbines only have one factually proven effect at distances beyond the state mandated setbacks. You can see them. A siting setback that is greater than the state standard puts wind development in jeopardy. Our county can't afford to jeopardize this opportunity. My family, future children and community can't afford to pass this up. This opportunity is right here, right now. Let's quit stalling and trying to prove that we know something that the state doesn't. Development is not going to wait on us, I am sure the wind blows in other counties.

As a taxpaying landowner and concerned citizen I request that you secure the future of this county by adopting the 1320' setback for rural residences and the 3520' setback for non-resource zone boundaries and city limits. Failing to do so, is possibly taking a pass on this opportunity and waiting for the next. It might be a long wait...

Thanks for your time and consideration.

Blaine Carver

wcplanning wcplanning <wcplanning@co.wasco.or.us>

Wasco County Energy Ordinance

1 message

robin@moats.com <robin@moats.com> Tue, Mar 20, 2012 at 1:32 AM
Reply-To: robin@moats.com
To: wcplanning@co.wasco.or.us

To whom it may concern,

Property rights. Always a contentious issue depending on which side you happen to be on. While I would prefer not to have my next door neighbor paint their house chartreuse I would far rather that than live in a development where everything, including the color of the window drapes facing the outside, is subject to approval by a group.

Chartreuse, however, is vastly different issue than a wind turbine of 200' - 400' in height that also produces some amount of noise (amount/type are in disputed debate) and then there is the lighting mechanism on top. Compound that by multitudes and have it erected nearby where it will affect my daily quality of life on multiple levels, yes, I am going to say something. I have no misconception and understand that barring something unforseen (or the expiration of the federal tax credits) most wind 'farm' projects will go forward. I would like to think, however, that Wasco County takes in to consideration all of its residents.

I believe in alternative energy sources. I do not, however, believe that the ends necessarily justify *all* the means used to accomplish the goal. "Green energy' was a bandwagon that has turned into a steamroller which threatens to destroy other, non-monetary, things of value. Wasco County is primarily rural and prime for wind turbine projects. In the comments that I have read in regards to the various wind projects most of the proponents appear those that have already signed agreements to lease their land or who may be approached for future projects. I certainly understand their desire to develop their land as they so choose. Most county residents do not have the luxury of acreage that is large or within/suitable for a wind project but will be affected regardless (this applies to virtually any large industrial/development project).

Please do not reduce the setbacks and in fact consider increasing them.

Please adopt the radar triggered lighting as a standard.

Rural counties tend to have fairly tight budgets and limited economies and industrial projects of this nature are brought to us like a 24k carrot on a stick. Wasco County views and quiet are also of value, albeit of a different sort. I would ask the Board of Commissioners to not sell the entire soul of the county for the piggy bank.

Sincerely,

Robin Moats
PO Box 24
Antelope OR 97001

Section 19.030(D)(1)(c) - Setbacks

The suggested revisions in the Staff Report incorporate the concept of participating versus non-participating landowner and attempt to further define the process for obtaining an adjustment to a setback standard.

It is likely that those participating in this process understand the intent of the suggested provisions, but to ensure that all future users of the LUDO understand what is required in order to meet the setback standards, either directly or with an adjustment, additional clarity is needed.

We encourage the Board to adopt the following recommended revisions (explanations of substantive changes are explained in italics below). A clean version of the suggested revisions is included as Attachment A.

(1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(No suggested changes)

(2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries using the process described in 19.030(D)(1)(c)(3)(C) below. ~~above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A). As part of the permitting process the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The permission from abutting property owners, road authority, or utility.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~
~~(c) Site specific conditions.~~
~~(d) Minimizing conflicts with existing infrastructure.~~
~~(e) Avoiding or minimizing potential environmental or resource impacts.~~

Wind turbines shall ~~still be required to~~ meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings ~~- Wind turbines shall be setback from all approved resource zone dwellings a minimum of 2/3 mile (3,520 feet), measured from the center line of the turbine tower to the edge of the dwelling or the distance required to comply with the DEQ noise standard (OAR 340-035-0035) in Subsection D(3) above, whichever is greater unless a noise easement is obtained under OAR 340-035-0035.~~

A. **Participating Landowners**: For an owners of a legal resource dwellings who ~~are~~ also is a landowners in the Energy Facility Project Area (e.g., a leaseholder or easement holder to facilitate the construction of the project), the wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction; provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

B. **Non-Participating Landowners**: For an owners of a legal resource dwellings who is ~~are~~ not a landowners in the Energy Facility Project Area, the wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

C. **Adjustment Provision** ~~—~~ Applicant may, ~~An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be~~ applicant may request an adjustment to the ~~resource dwelling setback described above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. A~~

as part of the wind energy project permitting process, obtain ~~in judging whether or not an administrative adjustment~~ to authorize a lesser setback ~~shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon~~ demonstrating ~~findings~~ that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to~~

(The code needs to be clear that an adjustment is obtained through the wind energy permit process. It is inherent as a matter of Oregon land use law that the county must make findings in the permit decision to support a determination that the applicant has met the applicable criteria, which is why I suggest deleting the procedural language).

(1a) The underlying landowner (or applicable road authority or utility as may be appropriate for non-project boundary setbacks) supports the adjustment and evidence demonstrating the support is contained in the permit record;

~~Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility. The property owner's support or consent of a lesser setback.~~

(The adjustment is specific to the parcel upon which a legal resource dwelling is located; therefore, the support requirement should be from the specific landowner.)

~~(~~2~~b~~) Applicant can still meet ~~The proposed adjustment does not establish a setback in conflict with~~ the applicable DEQ noise standard;

~~. Applicant's ability to comply with DEQ noise regulations.~~

(As drafted this criterion was vague.)

(3~~c~~) The proposed adjustment will not force a significant change in accepted farm or forest practices on the subject parcel;

~~surrounding lands~~ devoted to such use ~~or available for farm of forest use. Site specific conditions of the site.~~

(The analysis should be specific to the parcel for which an adjustment is sought.)

~~(~~4d) ~~The proposed adjustment will not unduly burden existing infrastructure. Avoiding or minimizing potential environmental or resource impacts.~~

(When looking at an agricultural or forest parcel, it is unclear how this criterion would be applied. Without further clarification, it should be struck. It may be relevant for non-project boundaries if seeking an adjustment to a utility line setback but if that is the case, then it should be limited in application.)

(5) The proposed adjustment will not unduly impair safety in the area; and.

(6) ~~The proposed adjustment will minimize i~~Impacts to environmental resources will be avoided and minimized to the extent feasible.

(4) Non-Resource Zone Boundaries. ~~–~~Wind turbines shall be setback~~:~~

~~A~~a minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of a city limit, urban growth boundary, or ~~ies and~~ urban reserves ~~(~~as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these non-resource zone boundary setbacks~~properties~~. ~~:~~

~~(The adjustment provision does not apply to non-resource zoned propert~~ .

(This section has evolved throughout the code amendment process, and to provide greater clarity to the LUDO reader, it is suggested that non-resource boundaries be separated from city limits. Further, separating these standards emphasizes that an adjustment is only available for the city limits and urban areas setbacks.)

(5) City Limits and Urban Areas. Wind turbines shall be setback 3/4 mile (3,960 feet) from the established city limit, ~~or,~~ urban growth boundary, or urban reserve boundary of an~~y~~ incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision. ~~; or~~

~~The distance required to meet the DEQ noise standard (OAR 340-035-0035) in Subsection D(3) above, whichever is greater unless a noise easement is obtained under OAR 340-035-0035.~~

~~Adjustment Provision – Applicant may,~~
~~An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be applicant may request an adjustment to the non-resource boundary setback in subsection (b)-(c) above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee.~~

~~A~~as a ~~-~~part of the permitting process, obtain an adjustment to authorize a lesser setbacks ~~in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing~~

~~the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in non-resource zones may be authorized by~~ upon demonstrating ~~findings~~ that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The property owner's or local jurisdiction's support or consent of a lesser setback.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~
~~(c) Site specific conditions of the site.~~
~~(d) Avoiding or minimizing potential environmental or resource impacts.~~

(a) The incorporated city supports the adjustment and evidence demonstrating the support is in the permit record;

~~(1) Written Consent:~~
~~i. Proposal for administrative adjustment relating to incorporated cities shall include written authorization from appropriate city authority.~~
~~ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different from city limits) shall include written consent from all owners directly impacted by the proposed adjustment.~~

(b) ~~(2)~~ Applicant can still meet ~~The proposed adjustment does not establish a setback that is in conflict with~~ the applicable DEQ noise standard;

~~(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.~~

(c4) The proposed adjustment will not unduly burden existing infrastructure;

(d~~5~~) The proposed adjustment will not unduly impair safety in the area; and

(e~~6~~) The proposed adjustment will minimize impacts to environmental resources.

(The suggested revisions make clear that the city having jurisdiction over the area must grant support, not all the individual landowners. Requiring consent from all landowners would utterly devoid this adjustment process of any value. Moreover, in order to demonstrate compliance with the DEQ noise standard, as required under criterion (b), owners of noise sensitive receptors within the urban area would need to execute a noise

easement to allow for a lesser setback in most instances. Finally, given that this setback is intended to protect urban land, there is no need to consider protection of Goal 3 and 4 resources land under what was the third criterion.)

The suggested revisions accomplish the following:

- Specifies who is a participating landowner;
- Ensures than an adjustment cannot be forced on a resource dwelling owner;
- Prevents adjustments in non-resource zones;
- Clarifies the distinction between non-resource lands and urban areas; and
- Offers straightforward criteria to be applied in the wind energy permitting process.

Very truly yours,

Elaine R. Albrich

Elaine R. Albrich

Enclosure

cc: Brian Walsh

Attachment A

Clean Version of Recommended Setback Language

(1) Project Boundaries. If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(2) Non Project Boundaries. Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries using the process described in 19.030(D)(1)(c)(3)(C) below.

Wind turbines shall meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings

(A) Participating Landowners: For an owner of a legal resource dwelling who also is a landowner in the Energy Facility Project Area (e.g., a leaseholder or easement holder to facilitate the construction of the project), the wind turbine setback shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction; provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

(B) Non-Participating Landowners: For an owner of a legal resource dwelling who is not a landowner in the Energy Facility Project Area, the wind turbine setback shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

(C) Adjustment Provision. Applicant may, as part of the wind energy project permitting process, obtain an adjustment to authorize a lesser setback upon demonstrating that the following criteria are met:

(1) The underlying landowner (or applicable road authority or utility as may be appropriate for non-project boundary setbacks) supports the adjustment and evidence demonstrating the support is contained in the permit record;

(2) Applicant can still meet the applicable DEQ noise standard;

(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on the subject parcel;

(4) The proposed adjustment will not unduly impair safety in the area; and

(5) Impacts to environmental resources will be avoided and minimized to the extent feasible.

(4) **Non-Resource Zone Boundaries.** Wind turbines shall be setback a minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of a city limit, urban growth boundary, or urban reserve (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these non-resource zone boundary setbacks.

(5) **City Limits and Urban Areas.** Wind turbines shall be setback 3/4 mile (3,960 feet) from the established city limit, urban growth boundary, or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision.

Applicant may, as a part of the wind energy project permitting process, obtain an adjustment to authorize a lesser setbacks upon demonstrating that the following criteria are met:

(a) The incorporated city supports the adjustment and evidence demonstrating the support is in the permit record;

(b) Applicant can still meet the applicable DEQ noise standard;

(c) The proposed adjustment will not unduly burden existing infrastructure;

(d) The proposed adjustment will not unduly impair safety in the area; and

(e) Impacts to environmental resources will be avoided and minimized to the extent feasible.

ELAINE R. ALBRICH
Direct (503) 294-9394
eralbrich@stoel.com

April 2, 2012

VIA EMAIL AND HAND DELIVERY

Board of Commissioners
Wasco County
511 Washington Street, Suite 302
The Dalles, OR 97058

Re: Comments on Final Draft of Proposed Code Amendments

Dear Commissioners:

On behalf of Iberdrola Renewables, Inc. ("IRI"), we offer these final written comments on the proposed amendments to the Wasco County Land Use Development Ordinance ("LUDO"). The following redline suggestions supplement and clarify those recommendations set forth in the staff report prepared for the April 4, 2012 public hearing ("Staff Report").

Section 19.030(D)(1)(a)(3) – Lighting

While the recommended language in the Staff Report attempts to balance concerns raised over the use of radar triggered lighting, the language does not adequately resolve concerns over the viability of radar triggered lighting. The Federal Aviation Administration ("FAA") accepts requests from sponsors of the Audio Visual Warning System (or radar triggered lighting), as an alternative to conventional lighting systems and analyzes and approves these systems on a case-by-case basis during aeronautical studies conducted under 14 CFR, part 77. The FAA, however, has not extended this approval for the use of AVWS on wind turbines or wind farms at this point. The FAA is undertaking efforts to study the viability of AVWA on wind farm applications, no guidance is currently available. *See* FAA letter to American Wind Energy Association dated November 2010 (enclosed).

For these reasons, we encourage the Board to adopt the following recommended revision:

> Lighting of towers shall be evaluated on a case-by-case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration the applicant shall minimize the amount of lighting to the extent feasible under the law and company safety protocols, which may include consideration of ~~shall seek approval of~~ radar triggered lighting ~~or use of the least polluting light source practicable under the law~~.

Section 19.030(D)(1)(c) - Setbacks

The suggested revisions in the Staff Report incorporate the concept of participating versus non-participating landowner and attempt to further define the process for obtaining an adjustment to a setback standard.

It is likely that those participating in this process understand the intent of the suggested provisions, but to ensure that all future users of the LUDO understand what is required in order to meet the setback standards, either directly or with an adjustment, additional clarity is needed.

We encourage the Board to adopt the following recommended revisions (explanations of substantive changes are explained in italics below). A clean version of the suggested revisions is included as Attachment A.

(1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(No suggested changes)

(2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries using the process described in 19.030(D)(1)(c)(3)(C) below. ~~above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A). As part of the permitting process the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The permission from abutting property owners, road authority, or utility.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~
~~(c) Site specific conditions.~~
~~(d) Minimizing conflicts with existing infrastructure.~~
~~(e) Avoiding or minimizing potential environmental or resource impacts.~~

Wind turbines shall ~~still be required to~~ meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings ~~- Wind turbines shall be setback from all approved resource zone dwellings a minimum of 2/3 mile (3,520 feet), measured from the center line of the turbine tower to the edge of the dwelling or the distance required to comply with the DEQ noise standard (OAR 340-035-0035) in Subsection D(3) above, whichever is greater unless a noise easement is obtained under OAR 340-035-0035.~~

A. **Participating Landowners**: For an owners of a legal resource dwellings who ~~are~~ also is a landowners in the Energy Facility Project Area (e.g., a leaseholder or easement holder to facilitate the construction of the project), the wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction; provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

B. **Non-Participating Landowners**: For an owners of a legal resource dwellings who is ~~are~~ not a landowners in the Energy Facility Project Area, the wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

C. **Adjustment Provision** ~~—~~ Applicant may, ~~An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be~~ applicant may request an adjustment to the ~~resource dwelling setback described above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. A~~

as part of the wind energy project permitting process, obtain ~~in judging whether or not an administrative adjustment~~ to authorize a lesser setback ~~shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon~~ demonstrating ~~findings~~ that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to~~

(The code needs to be clear that an adjustment is obtained through the wind energy permit process. It is inherent as a matter of Oregon land use law that the county must make findings in the permit decision to support a determination that the applicant has met the applicable criteria, which is why I suggest deleting the procedural language).

(1a) The underlying landowner (or applicable road authority or utility as may be appropriate for non-project boundary setbacks) supports the adjustment and evidence demonstrating the support is contained in the permit record;

~~Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility. The property owner's support or consent of a lesser setback.~~

(The adjustment is specific to the parcel upon which a legal resource dwelling is located; therefore, the support requirement should be from the specific landowner.)

~~(~~2~~b~~) Applicant can still meet ~~The proposed adjustment does not establish a setback in conflict with~~ the applicable DEQ noise standard;

~~. Applicant's ability to comply with DEQ noise regulations.~~

(As drafted this criterion was vague.)

(3~~c~~) The proposed adjustment will not force a significant change in accepted farm or forest practices on the subject parcel;

~~surrounding lands~~ devoted to such use ~~or available for farm of forest use. Site specific conditions of the site.~~

(The analysis should be specific to the parcel for which an adjustment is sought.)

~~(~~4d) ~~The proposed adjustment will not unduly burden existing infrastructure. Avoiding or minimizing potential environmental or resource impacts.~~

(When looking at an agricultural or forest parcel, it is unclear how this criterion would be applied. Without further clarification, it should be struck. It may be relevant for non-project boundaries if seeking an adjustment to a utility line setback but if that is the case, then it should be limited in application.)

(5) The proposed adjustment will not unduly impair safety in the area; and.

(6) ~~The proposed adjustment will minimize i~~Impacts to environmental resources will be avoided and minimized to the extent feasible.

(4) Non-Resource Zone Boundaries. ~~–~~Wind turbines shall be setback~~:~~

~~A~~a minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of a city limit, urban growth boundary, or ~~ies and~~ urban reserves ~~(~~as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these non-resource zone boundary setbacks~~properties~~. ~~:~~

~~(The adjustment provision does not apply to non-resource zoned propert~~ .

(This section has evolved throughout the code amendment process, and to provide greater clarity to the LUDO reader, it is suggested that non-resource boundaries be separated from city limits. Further, separating these standards emphasizes that an adjustment is only available for the city limits and urban areas setbacks.)

(5) City Limits and Urban Areas. Wind turbines shall be setback 3/4 mile (3,960 feet) from the established city limit, ~~or,~~ urban growth boundary, or urban reserve boundary of an~~y~~ incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision. ~~; or~~

~~The distance required to meet the DEQ noise standard (OAR 340-035-0035) in Subsection D(3) above, whichever is greater unless a noise easement is obtained under OAR 340-035-0035.~~

~~Adjustment Provision – Applicant may,~~
~~An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be applicant may request an adjustment to the non-resource boundary setback in subsection (b)-(c) above without being subject to the variance processes in Chapters 6 or 7 and authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee.~~

~~A~~as a ~~-~~part of the permitting process, obtain an adjustment to authorize a lesser setbacks ~~in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing~~

~~the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in non-resource zones may be authorized by~~ upon demonstrating ~~findings~~ that the following criteria are met: ~~the request shall demonstrate safety factors have been considered and a lesser setback is warranted. Factors to support an adjustment include, but are not limited to:~~

~~(a) The property owner's or local jurisdiction's support or consent of a lesser setback.~~
~~(b) Applicant's ability to comply with DEQ noise regulations.~~
~~(c) Site specific conditions of the site.~~
~~(d) Avoiding or minimizing potential environmental or resource impacts.~~

(a) The incorporated city supports the adjustment and evidence demonstrating the support is in the permit record;

~~(1) Written Consent:~~
~~i. Proposal for administrative adjustment relating to incorporated cities shall include written authorization from appropriate city authority.~~
~~ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different from city limits) shall include written consent from all owners directly impacted by the proposed adjustment.~~

(b) ~~(2)~~ Applicant can still meet ~~The proposed adjustment does not establish a setback that is in conflict with~~ the applicable DEQ noise standard;

~~(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.~~

(c4) The proposed adjustment will not unduly burden existing infrastructure;

(d~~5~~) The proposed adjustment will not unduly impair safety in the area; and

(e~~6~~) The proposed adjustment will minimize impacts to environmental resources.

(The suggested revisions make clear that the city having jurisdiction over the area must grant support, not all the individual landowners. Requiring consent from all landowners would utterly devoid this adjustment process of any value. Moreover, in order to demonstrate compliance with the DEQ noise standard, as required under criterion (b), owners of noise sensitive receptors within the urban area would need to execute a noise

easement to allow for a lesser setback in most instances. Finally, given that this setback is intended to protect urban land, there is no need to consider protection of Goal 3 and 4 resources land under what was the third criterion.)

The suggested revisions accomplish the following:

- Specifies who is a participating landowner;
- Ensures than an adjustment cannot be forced on a resource dwelling owner;
- Prevents adjustments in non-resource zones;
- Clarifies the distinction between non-resource lands and urban areas; and
- Offers straightforward criteria to be applied in the wind energy permitting process.

Very truly yours,

Elaine R. Albrich

Elaine R. Albrich

Enclosure

cc: Brian Walsh

March 26, 2012

Dear Wasco County Commissioners,

As part of my testimony at the hearing on March 20th I referred to the inaccurate noise measurements submitted as part of UPC's Cascade Wind Project application. One example of this was that ambient noise measurements were taken when the wind was blowing 18 mph while the state limit is 10 mph. A speaker after me refuted my testimony, saying that there was no such requirement.

In support of my statement I have enclosed an excerpt from DEQ's *Sound Measurement Procedures Manual*. On page 7, Section 4.5.2, a., Weather Conditions: it states "Measurements shall not be taken when the wind speed exceeds 10 mph."

By signing a noise easement agreement, the user gives up the right to complain about the project. As an example, in a noise easement agreement used in Sherman County it states that present and future noise influences might be annoying to users of the property, noise influences might change over time, changes in wind project operations could result in increased noise influences, and that the user's perception of the noise exposure could change and that the user's sensitivity to noise could increase. The grantor releases any right, claim, or cause of action as a result. The result of signing this type of agreement is a de facto gag order.

I would support Iberdrola's request for exempting participating landowners from the setback requirements in exchange for imposing larger setbacks for non-participating landowners. The setbacks should be the same for all zones so that all non-participating citizens receive equal protection. Participating landowners should only be those who have consented to participate in the project. The term "Energy Facility Project Area" should be defined as including only those properties whose owners have consented to participate in the project.

Thank you for this opportunity to comment.

Sincerely,

Sheila Dooley

Sheila Dooley

816 E. 13th St.

The Dalles, Oregon 97058

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUND MEASUREMENT PROCEDURES MANUAL

NPCS-1

Instrument Calibration and Battery Check

4.4.1 Refer to Chapter 3 of NPCS-1 for instructions.

Noise Level Measurements

4.5.1 Comment: That information and data submitted to the Department should be recorded on Forms NPCS-4 and NPCS-5 as shown in Figure 4-3 and Figure 4-5, or on forms approved in writing by the Department.

4.5.2 Weather Conditions

a. The wind speed and direction shall be determined before measurements are taken and recorded on a form. Measurements shall not be taken when the wind speed exceeds 10 mph. The sound level meter windscreen shall always be installed on the microphone while taking measurements.

b. The relative humidity may be determined for the time measurements are taken. Measurements shall not be taken when precipitation affects results.

Comment: Measurements may be taken when the ground is wet if the readings are not influenced by motor vehicle tire noise on wet pavement.

c. Comment: The barometric pressure has an effect on the calibration level of most calibrators. This effect is usually small but can introduce some error under very low atmospheric pressure conditions or at high elevations. Typically no correction is needed at elevations below 2,000 feet. Above 2,000 feet elevation, the manufacturers correction factor must be applied to the instrument during calibration.

4.5.3 Determination of Meter Speed

a. Comment: The "FAST" meter speed is used for sounds of an essentially continuous nature. This speed is such that the indication instrument attains its final reading in approximately 0.2 seconds. In general, the "FAST" meter is used where meter fluctuations do not exceed 3 dB, or where the meter is required to follow fast changes in level such as an automobile or aircraft pass-by measurements.

Attachment A

Clean Version of Recommended Setback Language

(1) Project Boundaries. If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(2) Non Project Boundaries. Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall-height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

An applicant may request an adjustment to non-project boundaries using the process described in 19.030(D)(1)(c)(3)(C) below.

Wind turbines shall meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

(3) Resource Zone Dwellings

(A) Participating Landowners: For an owner of a legal resource dwelling who also is a landowner in the Energy Facility Project Area (e.g., a leaseholder or easement holder to facilitate the construction of the project), the wind turbine setback shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction; provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

(B) Non-Participating Landowners: For an owner of a legal resource dwelling who is not a landowner in the Energy Facility Project Area, the wind turbine setback shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

(C) Adjustment Provision. Applicant may, as part of the wind energy project permitting process, obtain an adjustment to authorize a lesser setback upon demonstrating that the following criteria are met:

(1) The underlying landowner (or applicable road authority or utility as may be appropriate for non-project boundary setbacks) supports the adjustment and evidence demonstrating the support is contained in the permit record;

(2) Applicant can still meet the applicable DEQ noise standard;

(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on the subject parcel;

(4) The proposed adjustment will not unduly impair safety in the area; and

(5) Impacts to environmental resources will be avoided and minimized to the extent feasible.

(4) **Non-Resource Zone Boundaries.** Wind turbines shall be setback a minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of a city limit, urban growth boundary, or urban reserve (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these non-resource zone boundary setbacks.

(5) **City Limits and Urban Areas.** Wind turbines shall be setback 3/4 mile (3,960 feet) from the established city limit, urban growth boundary, or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision.

Applicant may, as a part of the wind energy project permitting process, obtain an adjustment to authorize a lesser setbacks upon demonstrating that the following criteria are met:

(a) The incorporated city supports the adjustment and evidence demonstrating the support is in the permit record;

(b) Applicant can still meet the applicable DEQ noise standard;

(c) The proposed adjustment will not unduly burden existing infrastructure;

(d) The proposed adjustment will not unduly impair safety in the area; and

(e) Impacts to environmental resources will be avoided and minimized to the extent feasible.

wcplanning wcplanning <wcplanning@co.wasco.or.us>

Wind/Energy Ordinance Hearing - 4/4/12

1 message

jsilver@rconnects.com <jsilver@rconnects.com> Tue, Apr 3, 2012 at 1:54 PM
To: wcplanning@co.wasco.or.us

wcplanning@co.wasco.or.us

To: Wasco County Commission
Re: Wind/Energy Ordinance Hearing

April 3, 2012

From:John Silvertooth
PO Box 68
Antelope, Or. 97001

To the Commissioners:

Again I would like to come to hearing on April 4th but we have two medical appointments in Madras in the afternoon and it is just not possible.

I have been reading about radar activated lighting systems and it certainly seems like a winner to me and I hope this one survives the process.

I understand the county is in a quandary on these other issues and I will be interested to see what resolution comes forth.

I did want to say that we have had some discussion down here with our little group of neighbors and we considered what we may do if we feel the process does not protect our community in a way we feel is adequate.

At this time we are looking to file one or more initiative petitions to provide adequate setbacks not just here but elsewhere in the county.

There are other issues that may need to be addressed as well- perhaps now or perhaps a later date.

For example: Noise regulation. We are told that compliance with state noise standards will protect us. Then we read that there is virtually no enforcement of these standards. So we are looking for a way to enforce these standards in a pro-active way.

Now I am not talking about the current county and state officials, but I can remember well when Wasco Co. Planning gave the Rajneesh cult permits that allowed them to hold forth with a reign of terror. I also remember when the state Energy Facility Siting Council sited the Trojan Nuclear Power Plant on an earthquake fault and hid the maps from the public. So we have seen the system does not always work.

Thank you for taking my views into consideration. I was chastised for being too sarcastic in my last letter so I will try and reform my errant ways. I am a Obama and Kitzhaber supporter and I am glad to see that the county and some of the south county ranchers are getting behind the Obama and Kitzhaber energy agenda. I thought it was a bunch of conservatives all this this time. I wish there was more concern for the community as a whole however. It's easy to see how this current development fad is causing adverse effects all over the planet and how upset many people are about the destruction of their environment- from Donald Trump about the wind development in Scotland, to the activists fighting offshore wind in Lake Michigan where the biologists say the wind development will destroy finally the Monarch butterfly on their migration route, to the villagers in England dealing with E-On. Back in the day alternative energy was viewed as "appropriate technology." It seems to me that along the way to the bank somehow we lost the "appropriate" part of the equation.

I also don't understand why if these are such great projects that there aren't any American companies involved. We heard Jeanie Carver talk about energy independence. Well I don't consider it energy independence if some huge German and Spanish financiers are the owners. It sounds like more of the same.

We heard that they are "rolling in money" in Sherman County because of the wind turbines. I don't know about this at all. I do up there pretty much every week and I don't see anybody rolling in money. It looks like people are having a pretty hard time- they can't even afford keep the store open in Grass Valley. As a matter of fact I ask several of the county residents if they were rolling in money and they flatly denied it. "Somewhere over the rainbow..."

Respectfully,

John Silvertooth-Stewart

SUBMITTED VIA E-MAIL

April 2, 2012

Wasco County Board of County Commissioners
c/o Wasco County Department of Planning and Economic Development
2705 East Second Street
The Dalles, Oregon 97058

Re: Final Comments on Wasco County's proposed Energy Ordinance Updates (PLALEG-09-06-0003).

Dear Commissioners:

These comments are submitted on behalf of Mark Womble, Gary Casady, Phil Swaim, Sheila Dooley and Friends of the Columbia Gorge. Thank you for the many opportunities to comment and participate in the creation of an energy ordinance that allows responsible development to go forward while also protecting the interests of landowners and our community. The massive amount of materials given to you on this crucial issue is indeed daunting. To reduce the amount of material to review, we have collaborated to submit a single comment to propose a solution that addresses our primary remaining concerns while also addressing concerns raised by industry representatives and south county residents.

A. 1.5-Mile Setbacks and Iberdrola Renewables and Staff Proposal for Participating and Non-Participating Landowners

Staff's final proposed amendments include recommended language that would exempt participating landowner from turbine setback requirements. With two important conditions we would support staff's recommendation. First, participating landowners must be explicitly defined to only include landowners with a contractual agreement with the energy facility developer. Second, the County should adopt a 1.5-mile setback for non-participating landowners, non-resource zones, and cities.

A larger setback is justified since exempting participating landowners alleviates concerns raised by the industry, particularly in the south county where the vast majority of residences are owned by relatively few landowners that are likely participating in any foreseeable project. As explained by industry representatives, a 1.5-mile setback would be consistent with implementation of DEQ noise standards. A uniform 1.5-mile setback has important benefits over DEQ's noise standards. a uniform setback is substantially easier to implement and clear from the beginning of the permitting process. DEQ's noise standards are based on complex modeling and generally implemented through a condition of approval that defers to negotiations with affected landowners. With a uniform 1.5-mile setback there would be certainty and clarity for the public early in the process, which would avoid unnecessary controversy while also addressing the industry's primary concerns. Finally, a 1.5-mile setback would not substantially reduce the amount of developable land where there are commercially viable wind speeds. Fortunately,

commercially viable wind speeds are predominately located in areas with few residences. Even then, many of those residences are owned by a handful of landowners.

1. Defining Participating versus Non-Participating Landowners

The Staff's most recent proposal recommends exempting participating landowners from the proposed setback requirements. However, staff's definition of "participating landowners" could include landowners who have not consented to participate in the project. Staff's proposed language would apply to all landowners within the "Energy Facility Project Area," which is defined to include "The *proposed* location of an energy facility and all of its related and supporting facilities as well as lands within the project lease property boundary but outside the area of the primary development where there could be negative physical consequences as a result of the project such as soil compaction or erosion. Draft LUDO § 1.080 (emphasis added). Related and supporting facilities is broadly defined to include any development that would not otherwise occur without the development of the energy facility. Staff's proposed language could include parcels and dwellings that are not under contract or lease with the energy facility developer. The simple solution is to add language clarifying that participating landowners are those under contract with the energy facility developer.

2. Recommended Revisions to the Setback Provisions Draft NSA-LUDO § 19.030(D)(1)(c, sections (3) Resource Zone Dwellings and section 4 (Non-Resource Boundaries); .

We recommend the following revision to the version prepared by staff for the April 4 hearing. Our recommended deletions are in ~~**strikethrough**~~, and our recommended additions are **underlined**.

Draft NSA-LUDO § 19.030(D)(1)(c)

(3) Resource Zone Dwellings

a. Participating Landowners: For owners of legal resource dwellings who are ~~**also landowners**~~ **participating** in the Energy Facility Project ~~**Area**~~ **and who have committed the use of their property to the project by written instrument,** wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction, provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

b. Non-Participating Landowners: For owners of legal resource dwellings who are not **participating** ~~**landowners**~~ in the Energy Facility Project ~~**Area**~~, wind turbine setbacks shall be **1 1/2 miles** ~~**3,520 feet**~~, measured from the centerline of the turbine to the edge of the dwelling, or the distance required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

c. Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon findings that the following criteria are met:

(1) Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility.
(2) The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
(4) The proposed adjustment will not unduly burden existing infrastructure.
(5) The proposed adjustment will not unduly impair safety in the area.
(6) The proposed adjustment will minimize impacts to environmental resources.
(4) Non-Resource Boundaries - Wind turbines shall be setback:

(a) A minimum of **1 1/2 miles** ~~**1 mile (5,280 feet)**~~ from all non-resource zoned property boundaries located outside of urban growth boundaries and urban reserves (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g., rural residential). Adjustment provisions do not apply to these properties. .

(b) **1 1/2 miles** ~~**3/4 mile (3,960 feet)**~~ from the established city limit or urban growth boundary or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision

(c) The distance required to meet the DEQ noise standard (OAR 340-035-0035) unless a noise easement is obtained under OAR 340-035-0035.

(d) Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from non-resources zoned boundaries in subsection (b) (c) above may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized by upon findings that the following criteria are met:

(1) Written Consent:

i. Proposal for administrative adjustment relating to incorporated cities shall include written authorization from the appropriate city authority.
ii. Proposal for administrative adjustment related to an urban growth boundary or urban reserve boundary (different than city limits) shall

include written consent from all owners directly impacted by the proposed adjustment.

(2) The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
(3) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
(4) The proposed adjustment will not unduly burden existing infrastructure.
(5) The proposed adjustment will not unduly impair safety in the area.
(6) The proposed adjustment will minimize impacts to environmental resources.

2. Conclusion

Thank you for the opportunity to participate in this process. We look forward to observing the final deliberations.

Sincerely,

Richard Till, for
Friends of the Columbia River Gorge
Mark Womble
Gary Casady
Phil Swaim
Sheila Dooley

Public Health
Prevent. Promote. Protect.

NORTH CENTRAL PUBLIC HEALTH DISTRICT
"Caring For Our Communities"

419 East Seventh Street, The Dalles, OR 97058
Teléfono: 541-506-2600 Fax: 541-506-2601
Internet website: www.wshd.org

Memorandum

To: Wasco County Commissioners

CC: Tyler Stone, Monica Morris

From: Teri Thalhofer & Kathi Hall

Date: 3/20/2012

Re: Alert IIS Grant Proposal

The state announced a funding opportunity to purchase software and contracted services to provide interoperability with the state Alert IIS database. The original grant announcement was in August and was due in October. We were not ready to apply at that time since we were in the midst of implementing the core Insight program. The state must not have had enough applicants so they reopened the opportunity the first week of February and it was due February 22. We applied for the grant and have heard back from the state that they are considering our application. Currently we are accessing the Alert IIS database to forecast vaccinations needed for our clients. We also have to enter the data into Alert when vaccinations are given. This funding opportunity would allow us to purchase Care Connect which is a Netsmart product. This will allow us not only to access the Alert IIS system directly from our current medical record and client billing system, but will also allow us to have interoperability with the state lab.

We sent a draft MOU to Eric for his approval since it is a requirement of the grant. I have also sent a copy to our Netsmart Customer Service Representative because we need the Netsmart Contact information. The total of the grant is $35,000 and the purchase of Care Connect is $48,650. If the grant is awarded, we plan to pay the balance of the software purchase with our CMS Medicaid Incentive payment. We budgeted capital for our data system in divisions 7148 and 7152. We are not sure that the grant will be awarded. If not, we won't be able to make the purchase at this time.

On Monday, March 12, there was a conference call with Teri, Kathi, Paul, Tracy Little, DHS IIS Grant Coordinator, and Janet, Netsmart Account Manager, her Supervisor and Bob Adams, Netsmart IT/VP. Discussed the feasibility of the project from Netsmart's point of view and whether they can meet the July 31 deadline. Tracy sent them the specs and HL7 guide and will also send them a test HL7 message.

A Netsmart Project Manager is working on the timeline and Janet, our Account Manager said that the addendum to our current service agreement is in their contracts department. I have attached the grant proposal and budget.

Public Health
Prevent. Promote. Protect.

North Central Public Health District
"Caring For Our Communities"
419 East Seventh Street, The Dalles, OR 97058
Phone: 541-506-2600 Fax: 541-506-2601
Website: www.wshd.org

Enhanced Interoperability
Grant Funding Application for RFGP #3320

February 22, 2012

Public Health
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North Central Public Health District
"Caring For Our Communities"
419 East Seventh Street, The Dalles, OR 97058
Phone: 541-506-2600 Fax: 541-506-2601
Website: www.wshd.org

February 22, 2012

Tracy Little
Oregon Immunization Program
Office of Family, Oregon Health Authority
800 NE Oregon St., Suite 370
Portland, OR 97232
Phone: 971-673-0304

IIS-EMR Enhanced Interoperability Request for Funding

Please accept this notification as our intent to respond to the announcement number: RFGP #3320. It is the intention of North Central Public Health to apply for IIS-EMR Enhanced Interoperability Grant Funds. The project area is in the designated 'rural' North Central Oregon of Wasco, Sherman, and Gilliam Counties.

The goal of this project is to provide interoperability with Alert IIS, to decrease duplicative data entry, while improving client outcomes and decreasing missed opportunities for immunization for the clients our area serves. From January 1, 2011 to December 31, 2011 NCPHD provided vaccines for 324 clients ages 0-6 years.

North Central Public Health District meets the mandatory qualifications as indicated on the checklist that is included in this proposal on page 4. The amount of request is $35,000 for .30 FTE Project Manager for 5 months, software, subscriptions, and contractual support. Our Federal Tax ID number is 93-6002315.

We look forward to working with Alert IIS to improve health outcomes for the communities that we serve. Our mailing address and main phone and fax numbers are above and our key contact information is below.

Thank you,

Teri L Thalhofer, RN

Teri Thalhofer, RN, BSN
Director, NCPHD
541-506-2614
terit@co.wasco.or.us

Kathi Hall
Business Manager/Project Manager
541-506-2628
kathih@co.wasco.or.us

Application ESSAY

North Central Public Health District (NCPHD) is the only multi-county public health department in Oregon, serving the rural Counties of Wasco, Sherman, and Gilliam. NCPHD has always strived to be in compliance with reporting requirements of the Oregon Immunization Program. NCPHD has a current, authorized site agreement and confidentiality agreement with ALERT. As a county health department, already complies with all legislative, legal and financial requirements of the Oregon Health Authority.

On January 3, 2012, NCPHD 'went live' with INSIGHT, an Electronic Health Record (EHR) system purchased through Netsmart. The Insight software is certified by CMS and the EHR certification number is 30000004PRNQEAU. This product is currently used to document patient contacts for immunizations, family planning and sexually transmitted disease encounters. NCPHD staff has embraced the use of the EHR and is looking for ways to improve efficiency and client outcomes.

With additional funding to provide interoperability with Alert IIS, staff sees an opportunity to decrease duplicative data entry, while improving client outcomes and decreasing missed opportunities for immunization.

Currently, services are provided mainly from our central office in The Dalles. Services are also occasionally provided by nurses in the field. Three times per year, staff travels approximately 60 miles to Arlington to provide childhood immunizations in a rural health clinic that does not provide that service. Including both immunization and family planning clients, we serve approximately 3000 unique clients per year. It is our practice to review the immunization records of all family planning clients and offer vaccines as appropriate.

With the implementation of EHR, clinic staff has electronic access to the patient's medical history, excluding vaccinations. To receive vaccination history, clerical staff must be contacted and asked to query ALERT IIS. Just this extra step can serve as a barrier to a client receiving vaccines; time is lost, momentum in the discussion is lost and often the client chooses to wait. With interoperability, clinic staff can access this information in real time while discussing prevention and health goals with the client.

With interoperability, data will transfer to ALERT IIS when the immunization is given, not later through data entry of additional staff. This will decrease duplicate entry and decrease the opportunity for data entry errors.

As we are still adapting our work flow to the adoption of the EHR, the timing of adding ALERT IIS, if funding is received, would be optimal.

NCPHD Project Manager (PM) will work with Netsmart to determine whether electronic submission of immunization data will be real time or batch data. PM will also develop a plan for establishing a regularly scheduled time frame for submission. Ideally the data exchange would be real time.

In the future, NCPHD plans to add case management modules to our EHR. With that implementation, home visiting nurses will be able to easily access vaccination information during a visit without needing to log into a separate data base. The ease with which information can be obtained and shared with families will serve to enhance the opportunities for prevention activities for children being served in those programs.

Timeline

NCPHD will:

- With Netsmart's assistance, jointly develop the project plan and timeline to include workflow assessment, technology and software upgrades, training, changes in staff responsibilities, testing plans, and error/response handling protocols.
- With Netsmart's assistance, install licensed programs release.

Netsmart will:

- Consult and be the primary liaison with NCPHD's PM to develop and execute the project plan.
- Interface development and implementation, including mapping and generation of HL7 messages, formal testing and user documentation, and EHR modifications required to meet Oregon HL7 specifications.
- Provide support on transport methods, including security set up and certificate authority.
- Provide support for implementing/enhancing process for handling error response files, monitoring data quality, maintaining and troubleshooting data transmission to OHA, maintaining and troubleshooting transport layer security.
- Provide on-site user training.
- Provide on-site technical and implementation assistance during go-live.

Netsmart has concerns with the go-live date of 7/31/12 as being a project risk due to the short time frame. Netsmart is willing to participate in a conference call with key personnel to discuss specifics of the interface.

Financial

The amount of this request is $35,000. Of that amount, $7350 is for .30 FTE Project Manager for 5 months and $27,650 is for software, subscriptions, and contracted support with Netsmart. NCPHD's in-kind amount includes $48,540 for Wasco County staff, $2190 for materials and services, and $21,000 for the balance of the Netsmart contract with budgeted funds to upgrade the current EHR system. Please see budget on page 3 for specifics. The in-kind NCPHD staff time will be funded through current budget funding streams.

IIS - EMR

North Central Public Health District

March 1 - July 31, 2012

					Total	FTE	#	Inkind
PERSONNEL				Subtotal	$7,350.00		mo	$48,540
	Annual Salary	% FTE	# mo	0				
Teri Thalhofer, Director	$73,590	0%		0		10%	5	$3,066
Assists in the development and evaluation and progress of project work plan. Supervises Project Manager.								
Kathi Hall, Project Manager	$45,288	30%	5	$5,661				$0
Creates and executes project work plans and revises as appropriate to meet changing needs and requirements. Identifies resources needed and assigns individual responsibilities. Manages day-to-day operational aspects of project and scope. Tracks and reports staff hours and expenses. Manages project budget.								
Paul Fergusen, IS Manager	$55,086	0%		0		5%	5	$1,148
Consultant to Project Manager, works with Netsmart personnel to provide resources needed for project.								
Front Office Staff (3)	$90,672	0%		0		30%	5	$11,334
Check in clients, run forecast, consult with nurse to determine shots needed. Review paperwork. Check out client, verify billing information is correct.								
Nurses (3)	$160,127	0%		0		30%	5	$20,016
Review forecast, discuss shots needed with client, enter vaccines, lot numbers, billing codes into EHR, administer shots								
Tanya Wray, Admin. Staff	$35,496	0%		0		5%	5	$1,775
Provides project support to Project Manager								
Fringe Benefits @ (_30_)% or describe rate or method		$1,698		1,698		30%		$11,202
TRAVEL		$0			$0			
Total In-State Travel:								
Out-of-State Travel:								
EQUIPMENT (computer, communication, etc.)		$0			$0			
	$0							
SUPPLIES, MATERIALS and SERVICES (office, printing, phones, etc.)					$0			**$2,190**
General Fund M & S @ 6%								
CONTRACTUAL					$27,650			**$21,000**
Contract with Netsmart Technologies, Inc.for $48,650 to purchase Care Connect Software, Subscriptions, & Support for IIS Interoperability with NCPHD's EHR system	$27,650							
OTHER		$0			$0			
TOTAL DIRECT CHARGES					$35,000			$120,270
TOTAL INDIRECT CHARGES @ ___% of Direct Expenses:					$0			
TOTAL BUDGET:					$35,000			**$120,270**

Mandatory Qualifications Checklist

Please complete this checklist and submit as an attachment to your grant proposal. Where appropriate you may work discussion on these criteria into your proposal narrative.

- ✓ Applicant must currently be submitting and/or receiving immunization data to and/or from ALERT Immunization Information System (IIS).
- ✓ Applicant must have a current, authorized site agreement and confidentiality agreement with ALERT.
- ✓ Applicant must currently be using an ONC-ACTB certified electronic health record (EHR) system to maintain electronic health records (this does not include practice management/billing systems).
- ☐ **[Vendor has concerns of the go-live date of 7/31/12 as being a project risk.]** Applicant must agree to complete the project and go-live with the enhanced immunization interface by July 31, 2012.
- ✓ Applicant must meet all legislative, legal and financial requirements of the grant agreement, Attachment E.
- ☐ **[To be provided]** Applicant must provide a Memorandum of Understanding between collaborating organizations including a clear statement of support from:

  1) the organization that owns, hosts/operates or provides EHR services to applicant clinics in which it agrees to modify its application and interfaces pursuant to ALERT IIS web service specifications;

  2) all clinics utilizing the EHR indicating their support for work flow and technology changes and the ability to provide the data required and utilize the data received at point of service; and

  3) all primary organizations that will provide consulting, integration, development, support or maintenance services for the new system capabilities, if different from a) and b) above. A sample MOU, Attachment F, is provided in this grant application packet.
- ✓ Applicant must have the ability to utilize one of the available transport methods defined in the ALERT IIS HL7 Data Exchange Specifications: Transport Methods documentation.
- ✓ Applicant must agree to support and collaborate with the Oregon Immunization Program in its data quality efforts, now and in the future
- ✓ Applicant must agree that it may be subject to the applicable funding recover and termination provisions, if after receiving OHA funds, the grantee opts out of the agreement, or fails to meet or continue to meet the specifications outlined in the agreement.
- ✓ Applicant must submit a written proposal defining the specific activities, time line, and resources needed to accomplish project goals and a project budget as set out in Attachment B: Grant Application Instructions. This will be used as the evaluation criteria by comparing the expected cost to the benefit projected to be derived.

Public Health
Prevent. Promote. Protect.

NORTH CENTRAL PUBLIC HEALTH DISTRICT

"Caring For Our Communities"

419 East Seventh Street, The Dalles, OR 97058
Phone: 541-506-2600 Fax: 541-506-2601
Website: www.wshd.org

March 30, 2012

To: Wasco County Board of Commissioners
Re: Alert IIS project

Purpose:
The North Central Public Health District has been awarded a $35,000 grant from the Oregon Health Authority to provide interoperability between Insight, NCPHD's Electronic Health Record Program (EHR) and the state Alert IIS database. NCPHD is requesting an exemption from the competitive bid process of the Public Contracting Regulations. The specific exemption is under Section 29: Wasco County Special Exemption – (8) Data Processing.

Background:
Netsmart is the vendor of the Insight EHR program. Their product, Care Connect offers interoperability with immunization programs and labs. The special exemption for data processing states: "The materials included within this exemption are specialty items that must be compatible with county equipment. Due to the technical complexity of the materials, there are only a limited number of vendors. In addition, the need to rely on the most dependable vendor is critical, thus, the purchase of these materials does not lend itself to the competitive process."

The original quote for the Care Connect product was $48,650. NCPHD staff worked with the Netsmart Account representatives and they reduced the total amount of the product. By removing the lab portion of the product the cost went down from $48,650 for the first year to $46,120 for three years. The current cost for the first year is $34,050, costs for year two are maintenance & subscription fees at $4205, costs for year three are maintenance & subscription fees at $4315. Netsmart included a 10% discount which brought the total to $42,570 for three years.

Requested Action:
In that the additional module will become an extension of the current system and must fully integrate with existing software; Netsmart is the current vendor of Insight, the NCPHD's current EHR program; NCPHD is requesting that the Contract Review Board consider excluding the Alert IIS project from the Full Bid Procurement requirements. This request is based on the following findings from the Wasco County Contracting Rules:

Section 29: Wasco County Exemptions
(8) Data processing – contracts for the purchase or acquisition of data processing hardware or software.

PUBLIC HEALTH DIVISION
Oregon Immunization Program
John A. Kitzhaber, MD, Governor

800 NE Oregon St. Suite 370
Portland, OR 97232
Voice – 971-673-0300
FAX – 971-673-0278
TTY 971-673-0372
www.healthoregon.org/imm

Agreement Number: 138468

State of Oregon
IIS-EHR Enhanced Interoperability

Grant Agreement

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation and electronic format. To request an alternate format, please send an e-mail to OHA.Forms@state.or.us or contact the Office of Document Management at 503-378-3486, and TTY at 503-378-3523.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA," and

NORTH CENTRAL PUBLIC HEALTH DISTRICT
413 EAST SEVENTH STREET, THE DALLES, OR 97058
541-506-2628
PROJECT ADMINISTRATOR/CONTACT:
KATHI HALL
KATHHH@CO.WASCO.OR.US

Hereinafter referred to as "Grantee."

Work to be performed under this Agreement relates principally to the OHA's

OFFICE OF FAMILY HEALTH
IMMUNIZATION PROGRAM
800 NE OREGON, SUITE 370
PORTLAND, OREGON 97232
GRANT ADMINISTRATOR: TRACY LITTLE
PHONE: 971.673.0304
FAX: 971.673.0276
tracy.c.little@state.or.us

1. Effective Date and Duration

This Agreement shall become effective on the date this Agreement has been signed by every party hereto. Unless terminated or amended, this Agreement shall expire on **August 31, 2012**. Expiration shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any breach of a Grantee's warranty or any default or defect in Grantee's performance that has not been cured.

The Grantee understands and agrees that Grantee is a recipient of Grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of Grant conditions that causes or requires the State of Oregon to reclaim the funds granted to Grantee, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to reclaim from Grantee. These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

2. Agreement Documents

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

(1) Exhibit A, Part 1: Statement of Work
(2) Exhibit A, Part 2: Statement of Work, Consideration,
(3) Exhibit A, Part 3: Statement of Work, Special Provisions
(4) Exhibit B: Standard Terms and Conditions
(5) Exhibit C: Insurance Requirements
(6) Exhibit D: Required Federal Terms and Conditions
(7) Exhibit E: Sub Grantee Provisions *(Reserved)*
(8) Exhibit F: OHA RFGP #3320 and Grantee Proposal

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

b. This Agreement and the documents listed in Section 2. Agreement Documents, Subsection a., above, shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, A, B, C, E, and F

3. Consideration

a. Per the proposal and budget received by grantee in response to Request for Grant Proposals (RFGP) #3320, the total grant award is **$35,000.** The maximum, not-to-exceed compensation payable to Grantee under this Agreement, which includes any allowable expenses including amendments, is **$35,000.** OHA will not pay Grantee any amount in excess of the not-to-exceed compensation of this Agreement for completing the Activities, and will not pay for Activities performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment

must be signed by all parties to the grant before a notice to proceed with be issued to the Grantee. The effective date is defined as the date the agreement is signed and approved by OHA. No work shall begin under this grant agreement until a notice to proceed is issued by the Office of Contracts & Procurement.

b. All payments and interim payments to Grantee shall be subject to ORS 293.462, and shall be made in accordance with Exhibit A, Statement of Work, Part 2, Consideration.

c. The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to reclaim the funds granted to Grantee, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to reclaim from Grantee. These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

4. Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and OHA procedure "Contractual Governance," OHA's determination is that:

☐ Grantee is a sub-recipient; OR ☑ Grantee is a vendor.

Catalog of Federal Domestic Assistance (CFDA) # of federal funds to be paid through this Agreement is 93.712.

5. Grantee Data and Certification

a. Grantee Insurance Information. Grantee shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

Please print or type the following information

Organization Name (exactly as filed with the IRS) _____

Address _____

E-mail address: _____

Telephone: ( ) _____ - _____ Facsimile: ( ) _____ - _____

Nonresident alien [ ] YES [ ] NO

Proof of Insurance:

Workers Compensation Insurance Company _____

Business Designation:

[ ] Professional Corporation [ ] Partnership [ ] Limited Partnership
[ ] Limited Liability Company [ ] Limited Liability Partnership
[ ] Corporation [ ] Sole Proprietorship [ ] Other _____

The above information must be provided prior to Agreement execution. Grantee shall provide proof of Insurance upon request by OHA or OHA designee.

b. Certification. By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:

(1) The undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620;

(2) The information shown in Section 5, Grantee Data and Certification, above is Grantee's true, accurate and correct information;

(3) Grantee is not subject to backup withholding because:

(a) Grantee is exempt from backup withholding;

(b) Grantee has not been notified by the IRS that Grantee is subject to backup withholding as a result of a failure to report all interest or dividends; or

(c) The IRS has notified Grantee that Grantee is no longer subject to backup withholding; and

(4) Grantee is an independent Grantee as defined in ORS 670.600.

GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

GRANTEE: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures:

Approved by Grantee:

_____

Authorized Signature Printed Name/Title Date

Approved by OHA:

Authorized Signature | Printed Name/Title | Date

Approved for Legal Sufficiency:

N/A OAR 137-045-00030, Less than $150,000

Assistant Attorney General | Date

Office of Contracts and Procurement:

Contracts Specialist | Printed Name/Title | Date

EXHIBIT A

Part 1

Statement of Work

For purposes of this Request for Grant Proposal and the Grant Agreement "work" means grant activities not contracted work and work product means product of the grant activities.

Project Specific Abbreviations, Acronyms and Definitions
For purposes of this grant the terms below shall have the following meanings:

EHR: Electronic Health Record

IIS: Immunization Information System

HL-7: Is a set of guidelines or data standards that allow information to be shared and processed in a uniform and consistent manner. It is meant to allow healthcare organizations to easily share clinical information such as immunization information.

OHA: Oregon Health Authority

For the purpose of this Grant, the terms:

Price or cost may be used interchangeably.
Organization and Grantee may be used interchangeably.
State of Oregon, State, Oregon, or OHA, may be used interchangeably.

Purpose:

These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

The purpose of the Grant is to provide Grantee funds to help defray the cost of grantee development of IIS-EHR Interoperability as described in Request for Grant Proposal #3320.

Project Description:

Grantee has been selected based on their ability to meet mandatory requirements and represent their capabilities to be successful in achieving project goals and completing project activities as described in grantee's proposal. Under no circumstances may an organization and/or its customers either apply more than once or be awarded grant funds under different applications.

General Conditions:

OHA Responsibilities:

1. OHA will make key people and resources available to grantee relative to grant coordination, technical coordination, and operation/project coordination.
2. OHA will provide support in helping the Grantee in attaining the goals as stipulated in this agreement.

Grantee Responsibilities:

1. Grantee agrees to meet deliverables as stipulated in this agreement and per the technical specifications described in the ALERT IIS HL7 Implementation Guide.
2. Grantee agrees to participate in progress conference calls with OHA and/or Hewlett Packard, to be scheduled as needed and/or at mutually agreeable times.
3. Grantee agrees to provide a written final report and as requested by OHA.
4. Grantee agrees to provide documentation of completed project activities, including achievement of enhanced data exchange (to HL7 batch or real time) as part of final report. Final report guidelines will be provided upon notification of award.
5. Grantee agrees to prepare and provide a final report at completion of project and/or no later than 7/31/2012.
6. Grantee agrees to support, maintain, and sustain the HL7 (real time or batch) immunization data exchange. OHA must approve discontinuation of the electronic data exchange for any reason.

Acceptance and Approval Criteria:

The Grantee must submit all reports, guidelines, and written reports in MS Word or MS Excel format, or as otherwise approved in advance of submission by the OHA Contract Administrator. In the event that the Grantee submits unacceptable reports to OHA, OHA will immediately notify the Grantee of the defect and the Grantee shall have ten (10) working days to re-submit the written reports for acceptance.

Project Activities:

The Grantee agrees to complete the activities according to the proposed plan and time line outlined in the Grantee's proposal (Exhibit F). The purpose of this funding opportunity is to support ALERT partner organization's as they move to a more enhanced data exchange process, whether that is from flat file data exchange to HL7 data exchange, or HL7 batch data exchange to HL7 real time data exchange.

To meet the obligations of this grant, the grantee must complete the project and be live and operational on the enhanced data exchange process no later than 7/31/12.

EXHIBIT A

Part 2

Statement of Work

Consideration

Payment Provisions:

The following payment schedule is based on Grantee's proposal to enhance its current data exchange process with ALERT HS through activities described in proposal, referenced in Exhibit F: OHA RFGP #3320 and Grantee Proposal. The Grantee must send an approved invoice and documentation supporting completion of the milestone(s) in order for OHA to make payment.

Payment #1: Due upon execution of grant agreement by both parties, 50% of total grant award.

Payment #2: Due upon receipt and approval of a final report, including a final accounting of total actual project expenses, second 50% of grant award.

Grantee shall invoice OHA based on schedule set forth above. OHA shall pay only for completed, documented and accepted activities under this agreement. Funds may only be used for expenses incurred in the budget period for which they were granted. The grantee must submit an approved final invoice for all project expenses with the final report.

Invoices shall describe all goods delivered and all services performed with particularity and by whom they were performed, including name and job title, reference to the specific activities and deliverables. All invoices must include the total amount invoiced to date by Grantee prior to the current invoice. Grantee shall submit invoices to OHA's Contract Administrator. OHA will have the right to review each such invoice for compliance with the requirements of any relevant provisions of this Agreement. All payments to Grantee are subject to ORS 293.462.

Grantee shall not submit invoices for, and OHA shall not pay, any amount in excess of the total estimated project expenses provided with the Grantee's proposal without prior approval from OHA and may not exceed $35,000. If this maximum amount is increased by amendment of this agreement the amendment must be fully effective before Grantee performs services or delivers goods subject to the amendment. No payment will be made for any services performed or goods delivered before the effective date or after termination of this agreement, as it may be amended from time to time, in accordance with its terms.

Contract Administrator:

The OHA employee assigned to monitor grant compliance and authorize payment shall be:

Tracy Little, Grant Administrator
Oregon Health Authority
Division of Public Health
Office of Family Health, Immunization Program
800 Oregon Street, Suite 370
Portland, Oregon 97232
Phone: 971.673.0304
tracy.c.little@state.or.us

Travel and Other Expenses:

OHA shall not reimburse Grantee for any travel or additional expenses under this Grant.

EXHIBIT A

Statement of Work

Part 3

Special Provisions

1. Confidentiality of Client Information

a. All information as to personal facts and circumstances obtained by the Grantee on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her attorney, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.

b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.

c. OHA, Grantee and any sub Grantee will share information as necessary to effectively serve OHA clients.

2. Anticipated Amendments

a. OHA reserves the right to amend or extend the Agreement within the maximum milestone amount and the maximum grant period under the following general circumstances:

(1) OHA may extend the Agreement for additional periods of time, and for additional money associated with the extended period(s) of time. The determination for any extension for time will be based on OHA's satisfaction with performance of the work or services provided by the Grantee under this Agreement.

(2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.

b. OHA further reserves the right to amend the Statement of Work based on the original scope of work for the following:

(1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;

(2) Implement additional phases of the Work; or

(3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

c. Any amendment to this Agreement that does not meet the intent of Section 2. Anticipated Amendments, Subsections a. or b., above, shall be deemed an unanticipated amendment and shall be handled according to Oregon Administrative Rules.

d. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, either anticipated or unanticipated, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 21. "Amendments; Waiver; Consent," of this Agreement.

EXHIBIT B

Standard Terms & Conditions

1. Governing Law, Consent to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding collectively, "Claim" between OHA or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

2. Compliance with Applicable Law

a. Grantee shall comply and cause all sub-Grantees to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the performance of Work as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142 and (ii) all other applicable requirements of state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. OHA's performance under this Agreement is conditioned upon Grantee's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Grantee shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

b. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Grantee under this Agreement to OHA clients, including Medicaid-Eligible Individuals, shall, at the request of such OHA clients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. OHA shall not reimburse Grantee for costs incurred in complying with this provision. Grantee shall cause all sub Grantees under this Agreement to comply with the requirements of this provision.

c. Grantee shall comply with the federal laws as set forth or incorporated, or both, in this Agreement and all other federal laws applicable to Grantee's performance under this Agreement as they may be adopted, amended or repealed from time to time.

3. Independent Contractor

a. Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

b. If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement, represents and warrants that Grantee's Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Grantee currently performs work would prohibit Grantee's Work under this Agreement. If compensation under this Agreement is to be charged against federal funds, Grantee certifies that it is not currently employed by the federal government.

c. Grantee is responsible for all federal and state taxes applicable to compensation paid to Grantee under this Agreement and, unless Grantee is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Grantee's federal or state tax obligations. Grantee is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Grantee under this Agreement, except as a self-employed individual.

d. Grantee shall perform all Work as an independent Grantee. OHA reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, OHA may not and will not control the means or manner of Grantee's performance. Grantee is responsible for determining the appropriate means and manner of performing the Work.

4. Representations and Warranties

a. Grantee's Representations and Warranties. Grantee represents and warrants to OHA that:

(1) Grantee has the power and authority to enter into and perform this Agreement;

(2) This Agreement, when executed and delivered, shall be a valid and binding obligation of Grantee enforceable in accordance with its terms;

(3) Grantee has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Grantee will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Grantee's industry, trade or profession;

(4) Grantee shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and

(5) Grantee prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Time is of the Essence

Grantee agrees that time is of the essence under this Agreement.

6. **Funds Available and Authorized; Payments**

a. Grantee shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within OHA's current biennial appropriation or limitation. Grantee understands and agrees that OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

b. All billings and payments processed through the Medicaid Management Information System (MMIS) shall be processed in accordance with the provisions of Oregon Administrative Rules (OAR) 407-120-0100 through 407-120-0200, OAR 407-120-0300 through OAR 407-120-0380 and any other OHA Oregon Administrative Rules that are program specific to the billings and payments and, if applicable, to billing and payment of Medicaid services.

7. **Recovery of Overpayments**

If billings under this Agreement, or under any other Agreement between Grantee and OHA, result in payments to Grantee to which Grantee is not entitled, OHA, after giving written notification to Grantee, may withhold from payments due to Grantee such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

8. **Ownership of Work Product**

For the purposes of this grant agreement, all work product artifacts including, but not limited to, plans, assessments, analyses, requirements, diagrams, interface maps, integration models and the associated detailed development tasks, test plans and results, etc., that are associated with the business and technical developments relative to this project, will not be the intellectual property of any of the organizations that are a party to the application and/or receive funds under this grant but will be made available without restriction under public domain. To ensure this occurs, all documents and associated updates must be provided to OHA in electronic format for distribution pursuant to this purpose. OHA may withhold payment or cancel the grant award to any grantee if such artifacts are not provided on a timely basis. Due to the commingling of new and proprietary code during the development process, the recipients will not be required to hold the code in escrow or maintain a source library but neither can an organization that is a party to the application and/or receives funds under this grant resell or charge for products developed utilizing these grant funds. The grantee would be allowed, however, to charge for additional services associated with modifications, implementation or support required to make the application, interfaces or infrastructure suitable and sustainable for another organization.

9. **Indemnity**

a. GENERAL INDEMNITY. GRANTEE SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY

NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF GRANTEE OR ITS OFFICERS, EMPLOYEES, SUBGRANTEES, OR AGENTS UNDER THIS AGREEMENT.

b. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 9.a., GRANTEE EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OHA, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OHA BY GRANTEE THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR OHA'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE GRANTEE WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

c. CONTROL OF DEFENSE AND SETTLEMENT. GRANTEE SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO THIS SECTIONS 9.a. OR 9.b.; HOWEVER, NEITHER GRANTEE NOR ANY ATTORNEY ENGAGED BY GRANTEE SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL GRANTEE SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT GRANTEE IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

10. Default; Remedies; Termination

a. Default by Grantee. Grantee shall be in default under this Agreement if:

(1) Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(2) Grantee no longer holds a license or certificate that is required for Grantee to perform its obligations under the Agreement and Grantee has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or

(3) Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

b. OHA's Remedies for Grantee's Default In the event Grantee is in default under Section 10.a., OHA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

(1) termination of this Agreement under Section 10.e.(2);

(2) withholding all monies due for Work and Work Products that Grantee has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(4) exercise of its right of recovery of overpayments under Section 7 of this Agreement or setoff, or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Grantee was not in default under Section 10.a., then Grantee shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 10.e.(1).

c. Default by OHA. OHA shall be in default under this Agreement if OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within 30 calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.

d. Grantee's Remedies for OHA's Default. In the event OHA terminates the Agreement under Section 10.e.(1), or in the event OHA is in default under Section 10.c. and whether or not Grantee elects to exercise its right to terminate the Agreement under Section 10.e.(3), Grantee's sole monetary remedy shall be (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Agreement but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to Activity-based Work, a claim for the sum designated for completing the Activity multiplied by the percentage of Work completed and accepted by OHA, less previous amounts paid and any claim(s) that OHA has against Grantee. In no event shall OHA be liable to Grantee for any expenses

related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 10.d., Grantee shall immediately pay any excess to OHA upon written demand. If Grantee does not immediately pay the excess, OHA may recover the overpayments in accordance with Section 7. Recovery of Overpayments, and may pursue any other remedy that may be available to it.

e. Termination.

(1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Agreement:

(a) For its convenience upon 30 days' prior written notice by OHA to Grantee;

(b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's purchase of the Work or Work Products under this Agreement is prohibited or OHA is prohibited from paying for such Work or Work Products from the planned funding source.

(d) Immediately upon written notice to Grantee if there is a threat to the health, safety, or welfare of any OHA client, including any Medicaid Eligible Individual, under its care.

(2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Agreement, OHA may terminate this Agreement immediately upon written notice by OHA to Grantee, or at such later date as OHA may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 10.e.(2)(b) or Section 10.e.(2)(c) below, upon the occurrence of any of the following events:

(a) Grantee is in default under Section 10.a.(1) because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

(b) Grantee is in default under Section 10.a.(2) because Grantee no longer holds a license or certificate that is required for it to perform Work under the Agreement and Grantee has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or

(c) Grantee is in default under Section 10.a.(3) because Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so

fails to pursue the Work as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

(3) Grantee's Right to Terminate for Cause. Grantee may terminate this Agreement with such written notice to OHA as provided in this Section 10.e.(3), or at such later date as Grantee may establish in such notice, if OHA is in default under Section 10.c. because OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and OHA fails to cure such failure within 30 calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.

(4) Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

(5) Return of Property. Upon termination of this Agreement for any reason whatsoever, Grantee shall immediately deliver to OHA all of the OHA's property (including without limitation any Work Products for which OHA has made payment in whole or in part) that are in the possession or under the control of Grantee in whatever stage of development and form of recordation such OHA property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Grantee shall immediately cease all activities under this Agreement, unless OHA expressly directs otherwise in such notice of termination. Upon OHA's request, Grantee shall surrender to anyone OHA designates, all documents, research or objects or other tangible things needed to complete the Work Products.

11. Stop-Work Order

OHA may, at any time, by written notice to the Grantee, require the Grantee to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Grantee shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

a. Cancel or modify the stop work order by a supplementary written notice; or

b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10; Default; Remedies; and Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the Grantee, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

12. Limitation of Liabilities

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9. OR SECTION 10.e.(1), NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

13. Insurance

Grantee shall maintain insurance as set forth in Exhibit C, attached hereto.

14. Records Maintenance, Access

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Grantee's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that OHA and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee shall retain and keep accessible all Records for the longer of:

a. six years following final payment and termination of this Agreement;

b. the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or

c. until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

15. Information Privacy/Security/Access

If the Work performed under this Agreement requires Grantee or, when allowed, its sub Grantee(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Grantee access to such OHA Information Assets or Network and Information Systems, Grantee shall comply and require any sub Grantee(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

16. Force Majeure

Neither OHA nor Grantee shall be held responsible for delay or default caused by fire, riot, acts of God, power outage, government fiat, terrorist acts or other acts of political sabotage, civil unrest, labor unrest, or war, where such cause is beyond the reasonable control of OHA or Grantee, respectively. Grantee shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

17. Foreign Grantee

If Grantee is not domiciled in or registered to do business in the State of Oregon, Grantee shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement.

18. Assignment of Agreement, Successors in Interest

a. Grantee shall not assign or transfer its interest in this Agreement without prior written consent of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.

b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

19. Sub Agreements

Grantee shall not enter into any sub Agreements for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, Grantee shall include in any permitted sub-Agreement under this Agreement provisions to ensure that OHA will receive the benefit of sub Grantee performance as if the sub Grantee were the Grantee with respect to Sections 1, 2, 3, 4, 5, 8, 9, 14, 15, 17, 18, 19, and 20 of this Exhibit B. OHA's consent to any subagreement shall not relieve Grantee of any of its duties or obligations under this Agreement.

20. No Third Party Beneficiaries

OHA and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that Grantee's performance under this Agreement is solely for the benefit of OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

21. Amendments; Waiver; Consent

OHA may amend this Agreement to the extent provided in the solicitation document, if any, from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, the Department of Administrative Services and Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

22. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining

terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

23. Survival

Sections 1, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, and 23 of this Exhibit B shall survive Agreement expiration or termination, as well as those provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any default by Grantee that has not been cured.

24. Notice

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing, by personal delivery, facsimile, or mailing the same, postage prepaid, to Grantee or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section 24. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee. Notwithstanding the foregoing, to be effective against OHA, any notice transmitted by facsimile must be confirmed by telephone notice to OHA's Office of Agreements and Procurement number listed below or any such telephone number OHA may provide by written notice to Grantee.

OHA:	Office of Contracts & Procurement Oregon Health Authority 800 NE Oregon St., Suite 550 Portland, OR 97232 Telephone: 971-673-0747 Facsimile: 971-673-0583
GRANTEE:	As set forth on Page One of this Agreement.

25. Construction

The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.

26. Headings

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

27. Merger Clause

This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement.

28. Counterparts

This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

EXHIBIT C
Insurance Requirements

During the term of this Agreement Grantee shall maintain in force at its own expense, each insurance noted below:

1. **Required by OHA of Grantees with one or more workers, as defined by ORS 656.027.**

   Workers' Compensation: All employers, including Grantee, that employ subject workers who work under this Agreement, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide the Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements.

2. **[ ] Required by OHA [X] Not required by OHA.**

   Professional Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.

3. **[X] Required by OHA [ ] Not required by OHA.**

   General Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement. It shall provide that the State of Oregon, Oregon Health Authority (OHA) and its divisions, officers and employees are Additional Insureds but only with respect to the Grantee's services to be provided under this Agreement.

4. **[ ] Required by OHA [X] Not required by OHA.**

   Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that the State of Oregon, Department of Human Service and their divisions, officers and employees are Additional Insured but only with respect to the Grantee's services to be provided under this Agreement.

   Automobile Liability insurance with a combined single limit, or the equivalent, of not less than the Oregon Financial Responsibility Law (ORS 806.060), for each accident, for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. **Notice of cancellation or change**. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Grantee or its insurer(s) to OHA;

6. **Certificates of insurance**. As evidence of the insurance coverages required by this Agreement, the Grantee shall furnish acceptable insurance certificates to OHA upon request. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the State. The Grantee shall be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance, as applicable.

EXHIBIT D
Required Federal Terms & Conditions

Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Grantee shall comply and, as indicated, cause all sub-Grantees to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Grantee, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions**

Grantee shall comply and cause all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, Grantee expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990, (d) Executive Order 11246, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. **Equal Employment Opportunity**

If this Agreement, including amendments, is for more than $10,000, then Grantee shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. **Clean Air, Clean Water, EPA Regulations**

If this Agreement, including amendments, exceeds $100,000 then Grantee shall comply and cause all sub Grantees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal Agreements, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, HHS and the appropriate Regional Office of the Environmental Protection Agency. Grantee shall include and cause all sub Grantees to include in all Agreements with sub Grantees receiving more than $100,000, language requiring the sub Grantee to comply with the federal laws identified in this section.

4. **Energy Efficiency**

Grantee shall comply and cause all sub Grantees to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163).

5. **Truth in Lobbying**

The Grantee certifies, to the best of the Grantee's knowledge and belief that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal Agreement, grant, loan or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Agreement, grant, loan or cooperative agreement, the Grantee shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The Grantee shall require that the language of this certification be included in the award documents for all subawards at all Milestones (including subcontracts, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients and sub Grantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

6. **HIPAA Compliance**

As a Business Associate of a Covered Entity, OHA must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and OHA must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of OHA related to this Contract are covered by HIPAA. Contractor shall determine if Contractor will have access to, or create any protected health information in the performance of any Work or other obligations under this Contract. To the extent that Contractor will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, OHA as specified in the Contract, Contractor shall comply and cause all subcontractors to comply with the following:

a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health

Information relating to specific individuals may be exchanged between Contractor and OHA for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate OHA Privacy Rules, OAR 407-014-0000 *et. seq.*, or OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at https://apps.state.or.us/Forms/Served/DE2090.pdf or may be obtained from OHA.

b. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with OHA or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.

c. Consultation and Testing. If Contractor reasonably believes that the Contractor's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the OHA Information Security Office. Contractor or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the OHA testing schedule.

d. Contractor and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.

7. Resource Conservation and Recovery

Grantee shall comply and cause all sub Grantees to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247.

8. Audits

a. Grantee shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

9. Debarment and Suspension

Grantee shall not permit any person or entity to be a sub Grantee if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties

Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Grantees declared ineligible under statutory authority other than Executive Order No. 12549. Sub Grantees with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Drug-Free Workplace

Grantee shall comply and cause all sub contractors to comply with the following provisions to maintain a drug-free workplace: (i) Grantee certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Grantee's workplace or while providing services to OHA clients. Grantee's notice shall specify the actions that will be taken by Grantee against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Grantee's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in Section 10., Subsection (i) above; (iv) Notify each employee in the statement required by Section 10., Subsection (i) that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; (v) Notify OHA within 10 days after receiving notice under Section 10., Subsection (iv) from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of Section 10., Subsections(i) through (vi); (viii) Require any sub Grantee to comply with Section 10., Subsections (i) through 10(vii); (ix) Neither Grantee, or any of Grantee's employees, officers, agents or sub Grantees may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Grantee or Grantee's employee, officer, agent or sub Grantee has used a controlled substance, prescription or non-prescription medication that impairs the Grantee or Grantee's employee, officer, agent or sub-Grantee's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of the Agreement.

11. Pro-Children Act

Grantee shall comply and cause all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.).

12. Medicaid Services

Grantee shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).

b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).

c. Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.

d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Grantee shall acknowledge Grantee's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

e. Entities receiving $5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, Grantees and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).

13. Agency-based Voter Registration

Grantee shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

EXHIBIT E
Required Sub Grantee Provisions

(RESERVED)

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EXHIBIT F

RFGP 3320 and Grantee Proposal

All documents, Exhibits, and Attachments listed above are on file at OHA

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Netsmart Subscription Products Addendum

I. Introduction

This Addendum is a supplement to the terms of the License and Services Agreement dated June 15, 2011 by and between Netsmart Technologies, Inc. ("Netsmart"), andNorth Central Public Health District, ("Licensee"), which will be referred to in this Addendum as the "Master Agreement". The terms and conditions of this Addendum will apply to Subscription Products and Services identified in Section II by check mark. All references to Schedules in this Addendum refer to the Schedules of this Addendum.

II. Subscription Products and Services Descriptions.

The Subscription Products and Services identified with a check mark will be provided under the terms of the Master License and the supplemental terms of this Addendum. Subscription Products and Services will include all generic versions, corrections, enhancements and improvements developed by Netsmart during the Term of this Addendum:

☐ OrderConnect ☒ Not Included

The OrderConnect suite is an e-Prescribing and medication management product. The full version of this product has the ability to exchange web-based pharmaceutical information, prescriptions, medication orders, disease specific information, laboratory orders, and radiology/imaging and results with defined allied healthcare partners.

☐ ProviderConnect ☒ Not Included

A software product that supports data exchange between the Netsmart host system and outside providers of care.

☒ CareConnect ☐ Not Included

A software service that enables clinical data to be shared between providers and other entities such as RHIOs Regional Health Information Organizations (RHIOs), HIE's, State agencies for quality measures, public health organizations for immunizations, reportable labs and syndromic surveillance data in support of national standards related to continuity of care. The specific modules and functions that will be provided as part of the CareConnect Products and Services are listed in Schedule A - CareConnect

☐ ConsumerConnect ☒ Not Included

A Consumer web portal that enables Care Providers to proactively involve Consumers in their care. Using the portal, Consumers can schedule appointments, review and comment on their treatment plans, view current medications and track administration, and communicate with their Care Providers.

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III. Additional (supplemental) Definitions

Any capitalized term not defined below but used in this Addendum will have the meaning given to that term in the Master Agreement.

"Agent" means any person who is authorized under applicable law and regulations to transmit or relay prescription authorization information between a Prescriber and a pharmacy. An Agent is typically a nurse who is authorized by a physician to communicate with a pharmacy or laboratory on behalf of a Prescriber.

"Anniversary Date" means the calendar anniversary of the Effective Date.

"Availability Date" is the first day of the month following the date on which Netsmart demonstrates that the Products and Services are accessible to Licensee over the Internet.

"Care Provider" means an organization that provides medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business including a hospital, critical access hospital, skilled nursing facility, or comprehensive outpatient rehabilitation facility.

"Changes" All Changes to the terms of this Addendum will be contained in Schedule Z.

"Charges" means the amounts to be paid by Licensee for the right to use the Subscription Products and Services and for hardware or other Third Party Products acquired by Licensee under the terms of this Addendum. The Charges and payment schedule are set forth in Schedule A.

"Consumer" means an individual who is receiving services from a Care Provider, and who has the right to access specific portions of their electronic health record and the ability to exchange messages with their Care Provider through a Subscription Services Product.

"Drug Information Data" or "DID" means context-relevant drug database products licensed from one of the following publishers: Cerner Multum, Inc. ("VantageRx"), First DataBank Evaluations of Drug Interactions ("EDI") or Thompson Reuters, Inc. ("UltiMedex") that provides drug and allergy interaction and dosage information (collectively, "DID Publishers").

"Effective Date" means the date on which both parties have executed this Addendum.

"Implementation Plan" means the standard work plan attached hereto as Schedule D which may be modified by Netsmart and Licensee following execution of this Addendum.

"Initial Term" has the meaning stated in section V, subdivision A.

"Non-Prescribing User" means any person who is granted limited access to OrderConnect for the purpose of editing information that is not required to be entered or modified by a Prescriber or Agent under applicable law and regulations. A Non-Prescribing User typically generates reports without modification of the information in the reports, and can update basic demographic information,

"Patient Data" or "Consumer Data" means names, addresses, social security numbers, medical records and any other information concerning or relating to Consumers which is deemed to be

protected health information under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Deidentified Data (as such term is defined by HIPAA) shall not be considered to be Patient Data.

"Prescriber" means any person who possesses a DEA number and who is authorized by law to write prescriptions.

"Products and Services", or " Subscription Products and Services" means the products and associated services made available for the items selected for inclusion in this Addendum under Section II above.

"Service Level Agreement" means the minimum performance criteria that Netsmart will meet while delivering the Subscription Service and the remedial action if performance falls below the target criteria as provided in Schedule E.

"Specifications" is defined in the Master Agreement and will be supplemented with the specifications for Subscriber Products and Services as set forth in the documentation relating to the Subscription Services supplied to Licensee by Netsmart.

"Supplemental Services" means the installation, training and other services for Subscription Products and Services described in Schedule A.

"Technology Environment" means the computer hardware, private network and internet access capabilities, required to install and operate the Subscription Services. A description of the recommended Technology Environment is set forth in Schedule C attached hereto.

"User" means an individual or entity, other than a Consumer, that has been granted access with a user ID and password to a Subscription Product or Service by the Licensee.

IV. License Terms and Conditions

A. The Subscription Products and Services are specifically included within the grant of license and term of license as "Licensed Programs" under the Master Agreement.

B. Licensee grants to Netsmart a non-exclusive, non-transferable license (the "Usage License") to use all Patient Data for the sole purpose of operating the Subscription Products and Services for the benefit of Licensee and its clients and for maintaining the Subscription Products and Services (for example, creating backups of the Patient Data or moving it between servers) so long as Netsmart has a bona fide need to do so subject to and for the sole purpose required by this Addendum and the Master Agreement. The Usage License does not confer on Netsmart any right to share Patient Data with third parties other than Netsmart employees or consultants who are bound by agreements that contain confidentiality provisions equivalent to those contained in the Master Agreement. The foregoing restriction on Netsmart's use of Patient Data does not prohibit Netsmart from making use of Deidentified Data as described and permitted under HIPAA.

V. Term and Termination

A. Netsmart will make the Subscription Products and Services available and Charges will apply, during the three (3) year terms shown in Schedule A for each Subscription Product or Service ("Initial Term"). After the Initial Term, the Subscription Products and Services will continue to

be available to Licensee for additional terms of twelve (12) months, commencing on each subsequent Anniversary Date, unless either party gives the other written notice not less than (90) days prior to an Anniversary Date that it is terminating its use of the Subscription Products and Services.

B. The CareConnect software Base License is a perpetual license, with maintenance and support provided for a one year term, renewable at the sole option of Licensee at the rates shown in Schedule A for the periods shown.

C. In the event that Licensee discontinues using the Subscription Products and Services for any reason, Licensee shall be entitled to the return of all data entered into the Subscription Product. In the event Netsmart ceases doing business, Licensee shall also be entitled to the return of all data entered into the Subscription Product. In the event data is returned to Licensee, it will be provided in comma delimited file format or another format mutually agreed to by both parties.

D. Either party may terminate this Addendum in the event the other is in material breach of the terms of this Addendum, or as permitted under the Master Agreement.

VI. Charges and Payment Terms

Customer shall pay Netsmart for the Subscription Products and Services as provided in Schedule A. Netsmart will give Licensee not less than sixty (60) days written notice prior to any Anniversary Date of any revised schedule of Charges for a subsequent term. Charges for any subsequent term will not be increased by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 5%, whichever is lower. Netsmart will invoice Licensee for all recurring charges on an annual basis. All invoices shall bear terms of net cash, thirty (30) days from date of mailing. Thereafter, any outstanding balance shall bear interest at the rate of 1 ½ % per month, or the highest rate of interest then permitted by law.

VII. Licensee Obligations

In addition to the obligations under the Master Agreement Licensee agrees:

A. That it has no ownership rights in data or information in the DID services or content.

B. To restrict use of Drug Information Data to licensed healthcare professional directly connected with the Licensee, either as an employee or an authorized affiliate. Such use shall be made only under the supervision of, and reliance upon, the clinical discretion and judgment of a licensed physician. As between the Licensee and the publisher of the Drug Information Data, Licensee assumes full responsibility for ensuring the appropriateness of using and relying upon the information supplied by the Drug Information Data publisher, in view of all attendant circumstances, indications and contraindications. Except as provided above, it will not otherwise make the DID content available to any person, or entity including the government, whether affiliated or not, except as required by subpoena or other legal process and after notice to the owner of the content.

C. To maintain accurate and up to date Patient Data in all systems covered by the Master Agreement.

D. To provide support to its Users and Consumers related to their use of the Subscription Products and Services.

E. To notify Netsmart in the event Licensee becomes aware of or suspects misuse, unauthorized access, data corruption or any other threat to the security of the Subscription Products system

and related data or if Licensee receives a subpoena or other legal process requiring disclosure of Netsmart confidential information or DID content.

F. To require each Consumer and User to enter into a binding agreement governing their use of the Subscription Products and Services including such terms as Licensee believes are necessary for its business, legal and risk management objectives, but including, at a minimum, terms that are the same as or equivalent to the terms stated in Schedule F.

G. For ConsumerConnect products, to provide the Required Hardware Configuration listed in Schedule A ConsumerConnect.

VIII. Netsmart Obligations

In addition to the obligations of the Master Agreement, Netsmart will be responsible for:

A. Establishing SSL connectivity between the Consumer's computing device and the Care Provider's firewall;

B. Meeting the service levels as stated in Schedule E;

C. Keeping Patient Data confidential in accordance with the terms of the Master Agreement.

IX. Limitation on Cumulative Liability

EXCEPT FOR A CONTRACTUAL OBLIGATION TO INDEMNIFY LICENSEE, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SUBSCRIPTION PRODUCTS AND SERVICES COVERED BY THIS ADDENDUM, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE CHARGES PAID TO NETSMART UNDER SCHEDULE A FOR THE PRIOR TWELVE (12) MONTHS.

X. List of Schedules

Schedule A	Included Subscription Products, Supplemental Services and Price
Schedule B	[Reserved]
Schedule C	Technology Environment
Schedule D	Implementation Plan
Schedule E	Service Level Agreement
Schedule F	Sample subscription agreement guidelines
Schedule Z	Changes to Terms and Conditions of Subscription Service Addendum

Netsmart Technologies, Inc.	LICENSEE
BY: _____	BY: _____
_____ (PRINTED NAME)	_____ (PRINTED NAME)
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

Schedule A – OrderConnect Charges and Payment Terms

☐ **Full Suite**
☐ **Lab/Radiology module**
☐ **e-Prescribing module**

Product Description	**Quantity**	**Unit Cost**	**Monthly Cost**	**One-time Setup Fees**	**Recurring Annual Cost: 3-yr contract (5% discount)**
Base Fee (payable annually)		$0			
Prescriber Monthly Subscription	Named Users		$ 0		
Non-Prescribing Users (i.e. prescriber agents, system admin's, and data entry)	Named Users		$ 0		
Free Fax Pages*	0 free pages				
One-time Training Fee**	Hrs. (web-based)			$ 0	
One-time Installation, Configuration Fee***					
TOTAL Cost			$ 0	$ 0	
Order Connect Payment Schedule :					
Year 1 Due on Effective Date of this Addendum					
Year 2 and following are payable annually in advance on the Anniversary Dates.					

*Each facility is allowed to fax 100 fax pages directly from the application per month for each prescriber license purchased. Faxed pages in excess of that allowance in any calendar month will be billed at $0.20 per page for the balance of that month.
** Additional training hours available at $225.00 per hour.
*** No on-site travel is included for this product implementation.

MANDATORY DISCLAIMER ON DID PUBLICATIONS AND SERVICES: Information provided by the DID publishers is believed to be accurate, up-to-date, and complete, but no guarantee is made by any of the DID publishers to that effect. In addition, the drug information contained therein may be time sensitive. The DID publishers do not endorse drugs, diagnose patients or recommend therapy. The DID services are informational resources designed to assist licensed healthcare practitioners in caring for their patients and/or to serve end-users viewing this service as a supplement to, and not a substitute for, the expertise, skill, knowledge and judgment of healthcare practitioners. Healthcare practitioners should use their professional judgment in using the information provided. DID information is not a substitute for the care provided by licensed healthcare practitioners. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective, or appropriate for any given patient. In connection with the use of RED BOOK information in Drug Information Data, Licensee acknowledges and agrees that THE PRICES CONTAINED IN RED BOOK ARE BASED ON DATA REPORTED BY MANUFACTURERS. THE DID PUBLISHERS HAVE NOT PREFORMED ANY INDEPENDENT ANALYSIS OF THE ACTUAL PRICES PAID BY WHOLESALEPRS AND PROVIDERS IN THE MARKETPLACE. THUS, ACTUAL PRICES PAID BY WHOLESALERS AND PROVIDERS MAY WELL VARY FROM THE PRICES CONTAINED IN THE DATABASE AND ALL PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE

Schedule A – CareConnect Charges and Payment Terms

Description		Amount Due
Netsmart Programs: Due on Effective Date.		
CareConnect Base License: For Meaningful Use Stage 1		$10,000
Total Payment - Netsmart Programs		**$10,000**
Year 1 Annual Maintenance and Subscription Fees*: Payable annually in advance on component Availability Date(s).		
CareConnect Base Maintenance (Initial Term)		$2,100
Quality Measures Outbound Interface	☒Included ☐Not Included	$1,000
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	$0
Immunizations Outbound Interface	☒Included ☐Not Included	$1,000
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	$0
		$4,100
Y2 Annual Maintenance and Subscription Fees*: Payable on 1st Anniversary Date.		
CareConnect Base Maintenance (Optional Term)		$2,205
Quality Measures Outbound Interface	☒Included ☐Not Included	$1,000
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	$0
Immunizations Outbound Interface	☒Included ☐Not Included	$1,000
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	$0
		$4,205
Y3 Annual Maintenance and Subscription Fees*: Payable on 2nd Anniversary Date.		
CareConnect Base Maintenance (Optional Term)		$2,315
Quality Measures Outbound Interface	☒Included ☐Not Included	$1,000
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	$0
Immunizations Outbound Interface	☒Included ☐Not Included	$1,000
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	$0
		$4,315
Total Payment - Netsmart Annual Maintenance and Subscription Fees		**$12,620**

CareConnect Set Up: Due on Effective Date	
Netsmart CareConnect set up	$8,500
Implementation Preparation Development & Testing	$15,000
Total Payment – CareConnect Set Up	**$23,500**
Total Amounts To Be Paid**	**$46,120**

* In-Network Labs include LabCorp, Quest, and Sterling. Licensee will select their desired Lab prior to Installation.

** No on-site travel is included for this implementation

Schedule A – ConsumerConnect Charges and Payment Terms – 3 Year

Description	Amount Due
Netsmart Programs: Payable annually in advance	
Annual payment for Year 1	
Annual payment for Year 2	
Annual payment for Year 3	
Total Payment - Netsmart Programs	
These amounts are based upon the existing user licenses for your Netsmart enterprise application. These fees will be adjusted based upon any increase in named users at a cost of $25 per user per year or the then current list price.	
Third Party Products Added By this Addendum: Due on Effective Date	
NTST Data Center Web Server Configuration Fee	
Total Payment -Third Party Products	
ConsumerConnect Services: Due on Effective Date	
Netsmart ConsumerConnect set up services	
Total Payment – ConsumerConnect Services	
Total ConsumerConnect System Cost	
TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Travel Time will be billable at $150 per hour. Travel and Living Expenses are as follows: Meals: Charged at Netsmart's then current daily per diem rate. The current rate is $50.00 per day Airline: Coach Class on Major Airline including any additional fees applied by the airline Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS Rental Car: Mid Size vehicle at local rates Ancillaries: Gas, Tolls, Parking Hotel: At local rates	Billed as incurred

Required Web Server Hardware Configuration

If server is to be supplied by Licensee, Licensee will make available a Web Server that either meets or exceeds the configuration shown in Schedule C Technology Environment.

Schedule B

[RESERVED]

Schedule C
Technology Environment

General Requirements

- 30kbps of sustained Internet bandwidth, per concurrent connected patient.
- Client must provide a public IP address for the web services server
- Client web services server must reside in DMZ, off of their firewall.
- Client is responsible for all public DNS changes and domain management

Required Web Server Hardware Configuration for ConsumerConnect*

Module	Description
PowerEdge R410	PowerEdge R410 Chassis w/up to 4 Cabled HDs, Quad-Pack LED Diagnostics
Operating System	Windows Server 2008 R2, Standard Edition,x64, Includes 5 CALS
Memory	4GB Memory (2x2GB), 1333MHz Single Ranked RDIMMs for 1 Proc, Advanced ECC
Processor	Intel® Xeon® X5650, 2.66Ghz, 12M Cache,Turbo, HT, 1333MHz Max Mem
Additional Processor	Single Processor Only
1st Hard Drive	HD Multi-Select
Internal Controller	PERC H700 Adapter, Internal RAID Controller 512MB Cache
Embedded Management	Baseboard Management Controller
Internal Optical Drive	DVD-ROM Drive, Internal
Hard Drive Configuration	RAID 1 for PERC/SAS 6ir, PERC H200/H700 Controllers
Rails	Sliding Ready Rails without Cable Management Arm
Hardware Support Services	3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Pack
Hard Drives (Multi-Select)	(2) 300GB 15K RPM Serial-Attach SCSI 6Gbps 3.5in Cabled Hard Drive

* Vendor choices shown are for illustration purpose only.

Schedule D
Implementation Plan

[To be created promptly after execution of this Addendum]

Schedule E
Service Level Agreement

1. Coverage; Definitions

This Service Level Agreement (SLA) applies to you ("Licensee") if you have contracted for any of the Subscription Products and Services identified in Section II of this Addendum. As used herein, the term "Service Availability" means the percentage of a particular month (based upon 24 hour days for the number of days in the subject month) that the Netsmart content is accessible on the Internet.

2. Service Level
   a. Goal:

Netsmart's goal is to achieve 100% Service Availability for all of our customers.

   b. Remedy:

Subject to Sections 3 and 4 below, if the Service Availability is less than 99% in any month, Netsmart will issue a **service** credit to Licensee in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected service(s):

Service Availability	Credit Percentage
99.0 to 100%	0%
98.0 to 98.9%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
94.9 or below	25%

3. Exceptions

Licensee shall not receive any credits under this SLA in connection with any failure or deficiency of Service Availability caused or associated with:

a. Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
b. Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
c. Licensee's acts or omissions (or acts or omissions of others engaged or authorized by Licensee), including, without limitation, custom scripting or coding), any negligence, willful misconduct, or misuse of the Services in breach of Netsmart's Terms and Conditions and Acceptable Use Policy;
d. Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.

4. Scheduled Maintenance

Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire ASP environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 5:00am – 11:00Am EST. Licensee shall not receive any credits under this SLA in connection with any scheduled maintenance event.

5. Credit Request and Payment Procedures

In order to receive a credit, Customer must submit a request for credit, within ten (10) business days after the incident supporting the request, by notice to Netsmart, Attention: Chief Financial Officer. Each request must include Customer's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within sixty (60) days after Netsmart's receipt of Customer's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to Customer in a particular month under this SLA cannot exceed the prorated annual subscription fee for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Customer or collected by Netsmart and are Customer's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA.

Schedule F

ConsumerConnect Sample Subscription Agreement

This Agreement states the terms and condition under which we will make available to you a supplementary communication medium (to be used in conjunction with your in-person visits and treatment ("the System").

When we use these terms in this Agreement, we mean the following:

"PHI" means information that either of us may send or receive over the System that relates to your past, present, or future physical or mental health or condition; the provision of health care to you; or the past, present, or future payment for the provision of health care to you.

[OTHER DEFINITIONS]

[THE NAME OF THE PROVIDER HIPAA POLICY and an electronic link to same]

["You "and "Your"]

["We", "Us", "Our"]

The System is not a diagnostic or decision making system. Personal, one-on-one observation and follow up will always be the cornerstone of your care and treatment program.

Also please note that the System is NOT a so called "real time" or instant messaging system. There will likely be a delay between the time you submit information and the point at which your medical care professionals will read and respond to that information.

IF THERE IS ANY DOUBT AS TO WHETHER YOU CAN WAIT FOR A RESPONSE TO A MEDICAL QUESTION, CALL YOUR PROVIDER AT (___) ___-_____.

IN THE EVENT OF A MEDICAL EMERGENCY, YOU MUST IMMEDIATELY CALL 911.

When you accept these terms, we grant to you and you alone, permission to use the System subject to the terms and conditions of this license. This permission cannot be transferred by you to anyone else. Similarly, you grant us permission to use any information you submit over the System for the purpose of providing you with medical care and to maintain the System (for example, back up, archiving).

You also grant us permission to provide this information to the operator of the System, to insurance carriers when you ask us to do so or to anyone that is authorized by law to receive this information, in all cases as permitted or authorized by the terms of Provider's release of information form.

You agree that we may send to you via the system, general information about your health care, in addition to information that is specific to your specialized treatment needs.

This agreement will continue until either of us provides notice to the other that we no longer wish to make available, on the one hand, or to use, on the other, the System and services.

In order to use the System, you will need a personal computing device that is connected to the Internet. You will be given either the opportunity to select a user name and password or we will assign you a user name and password. You must provide accurate and complete registration information any time you register to use the System. Communication between your personal computer and our system will be encrypted by Secure Socket Layer ("SSL") technology.

You agree to follow instructions and rules on use of the system that we may establish from time to time and communicate to you over the System.

You are responsible for maintaining security measures on your personal computer and home network, if any, to guard against use of your name and password, or any use of your account, by anyone other than you. At a minimum, you should have up to date anti-spyware, anti-virus protection, and if you are using a home network, a secure configuration of your network.

You must immediately notify us of any unauthorized use of your password or account or any unauthorized access to information stored on your home computing system.

You must not attempt to access information other than your own PHI.

As a condition to your acceptance of these terms, we also ask that you read and accept our privacy policy [PROVIDER TO USE THEIR POLICY via LINK FROM SYSTEM PORTAL]

Either you or we may terminate availability or use of the services at any time. If Provider terminates service on the system and as a result eliminates availability, you will receive thirty days advance notice.

THIS COMMUNICATION SYSTEM IS PROVIDED TO YOU WITHOUT CHARGE AS A SUPPLEMENT TO CONVENTIONAL COMMUNICATION WITH YOUR MEDICAL CARE PROVIDER AND MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY AS TO AVAILABILITY, NOW OR IN THE FUTURE.

USE OF THE SYSTEM IS A CHOICE AMONG COMMUNICATION ALTERNATIVES AVAILABLE TO YOU. PROVIDER MAY NOT BE HELD LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO YOUR INABILITY TO USE THE SYSTEM, OR YOUR CHOICE TO USE THIS SYSTEM RATHER THAN AN ALTERNATE COMMUNICATION MEDIUM SUCH AS TELEPHONE OR IN PERSON COMMUNICATION.

Schedule Z
Changes to Terms and Conditions of Subscription Products Addendum

Section	Revision
A-2	10% Discount Applied on First Year Total with the exception of Maintenance (Total First Year Cost is $34,050 and Total First Year Discount is $3,550
	Client is purchasing and testing their own server.

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
March 26, 2012	Public Hearings 11, A, 1	12-020

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk

THROUGH: Nolan K. Young, City Manager

DATE: March 7, 2012

ISSUE: Public Hearing to Receive Testimony Regarding Proposed Burn Restrictions Ordinance.

BACKGROUND: The Burn Policy Committee provided recommendations to the City Council at their July 11, 2011 meeting regarding banning the use of burn barrels and restricting open burning in The Dalles.

At their February 27, 2012 meeting, the City Council directed staff to add a Section to the ordinance to exempt agricultural burning and to adjust the seasons to match the current burn seasons of Mid-Columbia Fire and Rescue.

Staff is currently working with Wasco County to determine whether the restrictions may extend to the Urban Growth Boundary, as recommended by the Committee. Staff will continue to work with The Dalles Disposal and bring back recommendations regarding the burn barrel phase out program and options for garbage service. This will be brought to Council at a future meeting.

BUDGET IMPLICATIONS: None at this time.

COUNCIL ALTERNATIVES:

1. Staff Recommendation: ***Following the public hearing, move to adopt General Ordinance No. 12-1231 by title***

2. Direct staff to make amendments to the ordinance.

3. Decline to proceed with a burn restriction ordinance.

GENERAL ORDINANCE NO. 12-1321

AN ORDINANCE RESTRICTING BURNING OF MATERIAL WITHIN THE CITY LIMITS

WHEREAS, the City Council of the City of The Dalles has determined outdoor burning to adversely affect the health of the citizens of The Dalles; and

WHEREAS, outdoor burning contributes to poor air quality; and

WHEREAS, there are alternative methods for disposal of materials commonly burned outdoors, such as recycling and composting;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1. Nuisance Declared. The City Council of the City of The Dalles hereby finds that outdoor burning, except as exempted in following sections, constitutes a public nuisance and adversely affects the health and safety of the citizens of the City.

Section 2. Burning Barrels Prohibited. No person shall cause or allow to be initiated or maintained any outdoor burning in burn barrels or incinerators of any material within the city limits of the City of The Dalles.

Section 3. Open Burning Restricted. Open burning of yard debris shall be permitted on a seasonal basis. Seasons for open burning are April 1 through May 14 and October 16 through December 1.

Section 4. Permit Required. Permits for open burning shall be required. A permit must be obtained annually which will include both seasons and shall be issued by Mid Columbia Fire and Rescue.

Section 5. Exemptions. The following types of outdoor burning are exempt from the prohibition set forth in Section 2:

A. Recreational Fires: Burning of clean, unaltered wood or charcoal contained in an outdoor fireplace, barbecue grill, barbecue pit or other receptacle for pleasure, religious, ceremonial, or cooking purposes, so long as such fire does not emit dense smoke;

B. Training Fires: Fires for training purposes will be allowed only as conducted by Mid Columbia Fire and Rescue District.

RECOMMENDATIONS FROM OPEN BURN POLICY COMMITTEE

1. Ban burn barrels.

   A. Education. Develop educational material that will inform citizens about the negative health conditions created by burning trash in burn barrels and about the alternatives to burn barrels including recycling, composting and hazardous waste disposal programs. Distribute this information as broadly as possible to include messages on City water bills, Tri-County Hazardous Waste Program literature and direct mail pieces, radio and newspaper PSA's, etc. Consider expanding the Community Clean Up Day event to include education elements and information regarding alternatives to burning.

   B. Alternatives to Burn Barrels. Develop a phase out period of up to one year for burn barrels and develop a program to allow residents to trade their burn barrel for a compost device and/or shredder (for those who normally burn confidential papers) or a certificate for a month of garbage service in trade for the barrel. The Committee recommends seeking partnerships to fund this program. Provide drop off sites for shredding in public locations such as City Hall, Senior Center, and Tri-County Hazardous Waste and Recycling. Do not institute burn barrel ban until alternatives have been identified and supplied/funded.

   C. Upgrades to Garbage Service. Direct The Dalles Disposal to prepare information regarding alternative programs including, but not limited to, universal (mandatory) garbage service; service that would include garbage, recycle and yard debris pick up for one set fee; options for various can sizes; options for bi-weekly pick up; offer a free yard debris drop off day once per week; provide paper shredder at the transfer station for free use by public.

   D. Burn Ban Boundary. Dialogue with Wasco County regarding extending the City burn ban to the Urban Growth Boundary to avoid confusion, provide more consistent enforcement and to protect the health of the community more equally.

   E. Removal of Burn Barrels. Solve issue of disposing of/ collecting old burn barrels. Inform citizens that there is no charge for dropping off old burn barrels at The Dalles Disposal for recycling. Involve service organizations to help residents dispose of old burn barrels.

   F. Partnerships. Work with Mid-Columbia Fire and Rescue to implement any changes in burn barrel policy. Work and partner with other agencies and entities

to help provide education, implement alternatives to burning, and possibly fund programs.

2. Restrict Open Burning to Two Seasons of October 15 through November 30 and April 1 through May 31.

A. Education. Develop education materials that will inform citizens about the fire dangers and negative health conditions, especially during air inversion days, created by open burning. Distribute information regarding the concerns and alternatives, such as recycling, composting, and hazardous waste disposal programs, through Tri-County Hazardous Waste Program, direct mail, City water bill, radio and newspaper. Work with Mid-Columbia Fire and Rescue to provide education on burning alternatives when burn permits are issued.

B. Alternatives to Burning. Work to expand the number of free yard debris days with The Dalles Disposal. Explore possible residential drop off at Dirt Hugger. Direct The Dalles Disposal to prepare information regarding alternative programs, as outlined in recommendation #1,C.

C. Open Burn Boundary. Dialogue with Wasco County regarding extending the restricted open burn policy to the Urban Growth Boundary to avoid confusion, provide more consistent enforcement and to protect the health of the community more equally.

D. Partnerships. Work with Mid-Columbia Fire and Rescue to implement changes in open burning policy. Work with DEQ to establish a daily air quality report during open burn seasons. Work with agencies and media to develop a communication policy regarding air quality during burn seasons.

E. Review. Review implemented policies after one burn season to determine effectiveness of education and alternative programs to burning.

C. Agricultural Fires: The burning of any grass field, grain field, pasture, rangeland or other field by open burning or by use of mobile equipment or flaming equipment on any land or vegetation within the city limits and which has direct necessity for the production of an agricultural product. The destruction of diseased and/or rotated fruit trees shall be classified as an agricultural burn for the purposes of this ordinance.

Section 6. Inspection and Citation. The City Codes Enforcement Officer or designee shall be authorized to make investigations and inspections an necessary to enforce the provisions of this ordinance and to issue violation citations to the Municipal Court.

Section 7. Violation Penalty. Each fire constitutes a separate violation. A first time violation is punishable by a fine of $50.00. A second violation is punishable by a fine of $100.00 and additional violations shall be punishable by a fine of up to $500.00 per violation.

Section 8. Effective Date. This ordinance shall be in effect 30 days after adoption by the City Council.

PASSED AND ADOPTED THIS 26th DAY OF MARCH, 2012

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Absent, Councilors: _____
Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 26th DAY OF MARCH, 2012

SIGNED: _____
James L. Wilcox, Mayor

ATTEST: _____
Julie Krueger, MMC, City Clerk

PUBLIC HEALTH DIVISION
Oregon Immunization Program
John A. Kitzhaber, MD, Governor

800 NE Oregon St. Suite 370
Portland, OR 97232
Voice – 971-673-0300
FAX – 971-673-0278
TTY 971-673-0372
www.healthoregon.org/imm

Agreement Number: 138468

State of Oregon
IIS-EHR Enhanced Interoperability

Grant Agreement

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation and electronic format. To request an alternate format, please send an e-mail to OHA.Forms@state.or.us or contact the Office of Document Management at 503-378-3486, and TTY at 503-378-3523.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA," and

NORTH CENTRAL PUBLIC HEALTH DISTRICT
413 EAST SEVENTH STREET, THE DALLES, OR 97058
541-506-2628
PROJECT ADMINISTRATOR/CONTACT:
KATHI HALL
KATHHH@CO.WASCO.OR.US

Hereinafter referred to as "Grantee."

Work to be performed under this Agreement relates principally to the OHA's

OFFICE OF FAMILY HEALTH
IMMUNIZATION PROGRAM
800 NE OREGON, SUITE 370
PORTLAND, OREGON 97232
GRANT ADMINISTRATOR: TRACY LITTLE
PHONE: 971.673.0304
FAX: 971.673.0276
tracy.c.little@state.or.us

1. Effective Date and Duration

This Agreement shall become effective on the date this Agreement has been signed by every party hereto. Unless terminated or amended, this Agreement shall expire on **August 31, 2012**. Expiration shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any breach of a Grantee's warranty or any default or defect in Grantee's performance that has not been cured.

The Grantee understands and agrees that Grantee is a recipient of Grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of Grant conditions that causes or requires the State of Oregon to reclaim the funds granted to Grantee, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to reclaim from Grantee. These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

2. Agreement Documents

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

(1) Exhibit A, Part 1: Statement of Work
(2) Exhibit A, Part 2: Statement of Work, Consideration,
(3) Exhibit A, Part 3: Statement of Work, Special Provisions
(4) Exhibit B: Standard Terms and Conditions
(5) Exhibit C: Insurance Requirements
(6) Exhibit D: Required Federal Terms and Conditions
(7) Exhibit E: Sub Grantee Provisions *(Reserved)*
(8) Exhibit F: OHA RFGP #3320 and Grantee Proposal

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

b. This Agreement and the documents listed in Section 2. Agreement Documents, Subsection a., above, shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, A, B, C, E, and F

3. Consideration

a. Per the proposal and budget received by grantee in response to Request for Grant Proposals (RFGP) #3320, the total grant award is **$35,000.** The maximum, not-to-exceed compensation payable to Grantee under this Agreement, which includes any allowable expenses including amendments, is **$35,000.** OHA will not pay Grantee any amount in excess of the not-to-exceed compensation of this Agreement for completing the Activities, and will not pay for Activities performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment

must be signed by all parties to the grant before a notice to proceed with be issued to the Grantee. The effective date is defined as the date the agreement is signed and approved by OHA. No work shall begin under this grant agreement until a notice to proceed is issued by the Office of Contracts & Procurement.

b. All payments and interim payments to Grantee shall be subject to ORS 293.462, and shall be made in accordance with Exhibit A, Statement of Work, Part 2, Consideration.

c. The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to reclaim the funds granted to Grantee, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to reclaim from Grantee. These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

4. Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and OHA procedure "Contractual Governance," OHA's determination is that:

☐ Grantee is a sub-recipient; OR ☑ Grantee is a vendor.

Catalog of Federal Domestic Assistance (CFDA) # of federal funds to be paid through this Agreement is 93.712.

5. Grantee Data and Certification

a. Grantee Insurance Information. Grantee shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

Please print or type the following information

Organization Name (exactly as filed with the IRS) _____

Address _____

E-mail address: _____

Telephone: ( ) _____ - _____ Facsimile: ( ) _____ - _____

Nonresident alien [ ] YES [ ] NO

Proof of Insurance:

Workers Compensation Insurance Company _____

Business Designation:

[ ] Professional Corporation [ ] Partnership [ ] Limited Partnership
[ ] Limited Liability Company [ ] Limited Liability Partnership
[ ] Corporation [ ] Sole Proprietorship [ ] Other _____

The above information must be provided prior to Agreement execution. Grantee shall provide proof of Insurance upon request by OHA or OHA designee.

b. Certification. By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:

(1) The undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620;

(2) The information shown in Section 5, Grantee Data and Certification, above is Grantee's true, accurate and correct information;

(3) Grantee is not subject to backup withholding because:

(a) Grantee is exempt from backup withholding;

(b) Grantee has not been notified by the IRS that Grantee is subject to backup withholding as a result of a failure to report all interest or dividends; or

(c) The IRS has notified Grantee that Grantee is no longer subject to backup withholding; and

(4) Grantee is an independent Grantee as defined in ORS 670.600.

GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

GRANTEE: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures:

Approved by Grantee:

_____

Authorized Signature Printed Name/Title Date

Approved by OHA:

Authorized Signature | Printed Name/Title | Date

Approved for Legal Sufficiency:

N/A OAR 137-045-00030, Less than $150,000

Assistant Attorney General | Date

Office of Contracts and Procurement:

Contracts Specialist | Printed Name/Title | Date

EXHIBIT A

Part 1

Statement of Work

For purposes of this Request for Grant Proposal and the Grant Agreement "work" means grant activities not contracted work and work product means product of the grant activities.

Project Specific Abbreviations, Acronyms and Definitions
For purposes of this grant the terms below shall have the following meanings:

EHR: Electronic Health Record

IIS: Immunization Information System

HL-7: Is a set of guidelines or data standards that allow information to be shared and processed in a uniform and consistent manner. It is meant to allow healthcare organizations to easily share clinical information such as immunization information.

OHA: Oregon Health Authority

For the purpose of this Grant, the terms:

Price or cost may be used interchangeably.
Organization and Grantee may be used interchangeably.
State of Oregon, State, Oregon, or OHA, may be used interchangeably.

Purpose:

These funds made available by OHA to Grantee under this Grant are provided by the Center for Disease Control & Prevention (CDC) under the IIS and EHR Enhanced Interoperability Project, Award #U66 IP000438-01. (CFDA # 93.712)

The purpose of the Grant is to provide Grantee funds to help defray the cost of grantee development of IIS-EHR Interoperability as described in Request for Grant Proposal #3320.

Project Description:

Grantee has been selected based on their ability to meet mandatory requirements and represent their capabilities to be successful in achieving project goals and completing project activities as described in grantee's proposal. Under no circumstances may an organization and/or its customers either apply more than once or be awarded grant funds under different applications.

General Conditions:

OHA Responsibilities:

1. OHA will make key people and resources available to grantee relative to grant coordination, technical coordination, and operation/project coordination.
2. OHA will provide support in helping the Grantee in attaining the goals as stipulated in this agreement.

Grantee Responsibilities:

1. Grantee agrees to meet deliverables as stipulated in this agreement and per the technical specifications described in the ALERT IIS HL7 Implementation Guide.
2. Grantee agrees to participate in progress conference calls with OHA and/or Hewlett Packard, to be scheduled as needed and/or at mutually agreeable times.
3. Grantee agrees to provide a written final report and as requested by OHA.
4. Grantee agrees to provide documentation of completed project activities, including achievement of enhanced data exchange (to HL7 batch or real time) as part of final report. Final report guidelines will be provided upon notification of award.
5. Grantee agrees to prepare and provide a final report at completion of project and/or no later than 7/31/2012.
6. Grantee agrees to support, maintain, and sustain the HL7 (real time or batch) immunization data exchange. OHA must approve discontinuation of the electronic data exchange for any reason.

Acceptance and Approval Criteria:

The Grantee must submit all reports, guidelines, and written reports in MS Word or MS Excel format, or as otherwise approved in advance of submission by the OHA Contract Administrator. In the event that the Grantee submits unacceptable reports to OHA, OHA will immediately notify the Grantee of the defect and the Grantee shall have ten (10) working days to re-submit the written reports for acceptance.

Project Activities:

The Grantee agrees to complete the activities according to the proposed plan and time line outlined in the Grantee's proposal (Exhibit F). The purpose of this funding opportunity is to support ALERT partner organization's as they move to a more enhanced data exchange process, whether that is from flat file data exchange to HL7 data exchange, or HL7 batch data exchange to HL7 real time data exchange.

To meet the obligations of this grant, the grantee must complete the project and be live and operational on the enhanced data exchange process no later than 7/31/12.

EXHIBIT A

Part 2

Statement of Work

Consideration

Payment Provisions:

The following payment schedule is based on Grantee's proposal to enhance its current data exchange process with ALERT HS through activities described in proposal, referenced in Exhibit F: OHA RFGP #3320 and Grantee Proposal. The Grantee must send an approved invoice and documentation supporting completion of the milestone(s) in order for OHA to make payment.

Payment #1: Due upon execution of grant agreement by both parties, 50% of total grant award.

Payment #2: Due upon receipt and approval of a final report, including a final accounting of total actual project expenses, second 50% of grant award.

Grantee shall invoice OHA based on schedule set forth above. OHA shall pay only for completed, documented and accepted activities under this agreement. Funds may only be used for expenses incurred in the budget period for which they were granted. The grantee must submit an approved final invoice for all project expenses with the final report.

Invoices shall describe all goods delivered and all services performed with particularity and by whom they were performed, including name and job title, reference to the specific activities and deliverables. All invoices must include the total amount invoiced to date by Grantee prior to the current invoice. Grantee shall submit invoices to OHA's Contract Administrator. OHA will have the right to review each such invoice for compliance with the requirements of any relevant provisions of this Agreement. All payments to Grantee are subject to ORS 293.462.

Grantee shall not submit invoices for, and OHA shall not pay, any amount in excess of the total estimated project expenses provided with the Grantee's proposal without prior approval from OHA and may not exceed $35,000. If this maximum amount is increased by amendment of this agreement the amendment must be fully effective before Grantee performs services or delivers goods subject to the amendment. No payment will be made for any services performed or goods delivered before the effective date or after termination of this agreement, as it may be amended from time to time, in accordance with its terms.

Contract Administrator:

The OHA employee assigned to monitor grant compliance and authorize payment shall be:

Tracy Little, Grant Administrator
Oregon Health Authority
Division of Public Health
Office of Family Health, Immunization Program
800 Oregon Street, Suite 370
Portland, Oregon 97232
Phone: 971.673.0304
tracy.c.little@state.or.us

Travel and Other Expenses:

OHA shall not reimburse Grantee for any travel or additional expenses under this Grant.

EXHIBIT A

Statement of Work

Part 3

Special Provisions

1. Confidentiality of Client Information

a. All information as to personal facts and circumstances obtained by the Grantee on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her attorney, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.

b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.

c. OHA, Grantee and any sub Grantee will share information as necessary to effectively serve OHA clients.

2. Anticipated Amendments

a. OHA reserves the right to amend or extend the Agreement within the maximum milestone amount and the maximum grant period under the following general circumstances:

(1) OHA may extend the Agreement for additional periods of time, and for additional money associated with the extended period(s) of time. The determination for any extension for time will be based on OHA's satisfaction with performance of the work or services provided by the Grantee under this Agreement.

(2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.

b. OHA further reserves the right to amend the Statement of Work based on the original scope of work for the following:

(1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;

(2) Implement additional phases of the Work; or

(3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

c. Any amendment to this Agreement that does not meet the intent of Section 2. Anticipated Amendments, Subsections a. or b., above, shall be deemed an unanticipated amendment and shall be handled according to Oregon Administrative Rules.

d. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, either anticipated or unanticipated, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 21. "Amendments; Waiver; Consent," of this Agreement.

EXHIBIT B

Standard Terms & Conditions

1. Governing Law, Consent to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding collectively, "Claim" between OHA or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

2. Compliance with Applicable Law

a. Grantee shall comply and cause all sub-Grantees to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the performance of Work as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142 and (ii) all other applicable requirements of state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. OHA's performance under this Agreement is conditioned upon Grantee's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Grantee shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

b. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Grantee under this Agreement to OHA clients, including Medicaid-Eligible Individuals, shall, at the request of such OHA clients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. OHA shall not reimburse Grantee for costs incurred in complying with this provision. Grantee shall cause all sub Grantees under this Agreement to comply with the requirements of this provision.

c. Grantee shall comply with the federal laws as set forth or incorporated, or both, in this Agreement and all other federal laws applicable to Grantee's performance under this Agreement as they may be adopted, amended or repealed from time to time.

3. Independent Contractor

a. Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

b. If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement, represents and warrants that Grantee's Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Grantee currently performs work would prohibit Grantee's Work under this Agreement. If compensation under this Agreement is to be charged against federal funds, Grantee certifies that it is not currently employed by the federal government.

c. Grantee is responsible for all federal and state taxes applicable to compensation paid to Grantee under this Agreement and, unless Grantee is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Grantee's federal or state tax obligations. Grantee is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Grantee under this Agreement, except as a self-employed individual.

d. Grantee shall perform all Work as an independent Grantee. OHA reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, OHA may not and will not control the means or manner of Grantee's performance. Grantee is responsible for determining the appropriate means and manner of performing the Work.

4. Representations and Warranties

a. Grantee's Representations and Warranties. Grantee represents and warrants to OHA that:

(1) Grantee has the power and authority to enter into and perform this Agreement;

(2) This Agreement, when executed and delivered, shall be a valid and binding obligation of Grantee enforceable in accordance with its terms;

(3) Grantee has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Grantee will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Grantee's industry, trade or profession;

(4) Grantee shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and

(5) Grantee prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Time is of the Essence

Grantee agrees that time is of the essence under this Agreement.

6. **Funds Available and Authorized; Payments**

a. Grantee shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within OHA's current biennial appropriation or limitation. Grantee understands and agrees that OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

b. All billings and payments processed through the Medicaid Management Information System (MMIS) shall be processed in accordance with the provisions of Oregon Administrative Rules (OAR) 407-120-0100 through 407-120-0200, OAR 407-120-0300 through OAR 407-120-0380 and any other OHA Oregon Administrative Rules that are program specific to the billings and payments and, if applicable, to billing and payment of Medicaid services.

7. **Recovery of Overpayments**

If billings under this Agreement, or under any other Agreement between Grantee and OHA, result in payments to Grantee to which Grantee is not entitled, OHA, after giving written notification to Grantee, may withhold from payments due to Grantee such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

8. **Ownership of Work Product**

For the purposes of this grant agreement, all work product artifacts including, but not limited to, plans, assessments, analyses, requirements, diagrams, interface maps, integration models and the associated detailed development tasks, test plans and results, etc., that are associated with the business and technical developments relative to this project, will not be the intellectual property of any of the organizations that are a party to the application and/or receive funds under this grant but will be made available without restriction under public domain. To ensure this occurs, all documents and associated updates must be provided to OHA in electronic format for distribution pursuant to this purpose. OHA may withhold payment or cancel the grant award to any grantee if such artifacts are not provided on a timely basis. Due to the commingling of new and proprietary code during the development process, the recipients will not be required to hold the code in escrow or maintain a source library but neither can an organization that is a party to the application and/or receives funds under this grant resell or charge for products developed utilizing these grant funds. The grantee would be allowed, however, to charge for additional services associated with modifications, implementation or support required to make the application, interfaces or infrastructure suitable and sustainable for another organization.

9. **Indemnity**

a. GENERAL INDEMNITY. GRANTEE SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY

NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF GRANTEE OR ITS OFFICERS, EMPLOYEES, SUBGRANTEES, OR AGENTS UNDER THIS AGREEMENT.

b. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 9.a., GRANTEE EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OHA, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OHA BY GRANTEE THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR OHA'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE GRANTEE WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

c. CONTROL OF DEFENSE AND SETTLEMENT. GRANTEE SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO THIS SECTIONS 9.a. OR 9.b.; HOWEVER, NEITHER GRANTEE NOR ANY ATTORNEY ENGAGED BY GRANTEE SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL GRANTEE SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT GRANTEE IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

10. Default; Remedies; Termination

a. Default by Grantee. Grantee shall be in default under this Agreement if:

(1) Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(2) Grantee no longer holds a license or certificate that is required for Grantee to perform its obligations under the Agreement and Grantee has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or

(3) Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

b. OHA's Remedies for Grantee's Default In the event Grantee is in default under Section 10.a., OHA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

(1) termination of this Agreement under Section 10.e.(2);

(2) withholding all monies due for Work and Work Products that Grantee has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(4) exercise of its right of recovery of overpayments under Section 7 of this Agreement or setoff, or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Grantee was not in default under Section 10.a., then Grantee shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 10.e.(1).

c. Default by OHA. OHA shall be in default under this Agreement if OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within 30 calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.

d. Grantee's Remedies for OHA's Default. In the event OHA terminates the Agreement under Section 10.e.(1), or in the event OHA is in default under Section 10.c. and whether or not Grantee elects to exercise its right to terminate the Agreement under Section 10.e.(3), Grantee's sole monetary remedy shall be (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Agreement but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to Activity-based Work, a claim for the sum designated for completing the Activity multiplied by the percentage of Work completed and accepted by OHA, less previous amounts paid and any claim(s) that OHA has against Grantee. In no event shall OHA be liable to Grantee for any expenses

related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 10.d., Grantee shall immediately pay any excess to OHA upon written demand. If Grantee does not immediately pay the excess, OHA may recover the overpayments in accordance with Section 7. Recovery of Overpayments, and may pursue any other remedy that may be available to it.

e. Termination.

(1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Agreement:

(a) For its convenience upon 30 days' prior written notice by OHA to Grantee;

(b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's purchase of the Work or Work Products under this Agreement is prohibited or OHA is prohibited from paying for such Work or Work Products from the planned funding source.

(d) Immediately upon written notice to Grantee if there is a threat to the health, safety, or welfare of any OHA client, including any Medicaid Eligible Individual, under its care.

(2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Agreement, OHA may terminate this Agreement immediately upon written notice by OHA to Grantee, or at such later date as OHA may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 10.e.(2)(b) or Section 10.e.(2)(c) below, upon the occurrence of any of the following events:

(a) Grantee is in default under Section 10.a.(1) because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

(b) Grantee is in default under Section 10.a.(2) because Grantee no longer holds a license or certificate that is required for it to perform Work under the Agreement and Grantee has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or

(c) Grantee is in default under Section 10.a.(3) because Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so

fails to pursue the Work as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

(3) Grantee's Right to Terminate for Cause. Grantee may terminate this Agreement with such written notice to OHA as provided in this Section 10.e.(3), or at such later date as Grantee may establish in such notice, if OHA is in default under Section 10.c. because OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and OHA fails to cure such failure within 30 calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.

(4) Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

(5) Return of Property. Upon termination of this Agreement for any reason whatsoever, Grantee shall immediately deliver to OHA all of the OHA's property (including without limitation any Work Products for which OHA has made payment in whole or in part) that are in the possession or under the control of Grantee in whatever stage of development and form of recordation such OHA property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Grantee shall immediately cease all activities under this Agreement, unless OHA expressly directs otherwise in such notice of termination. Upon OHA's request, Grantee shall surrender to anyone OHA designates, all documents, research or objects or other tangible things needed to complete the Work Products.

11. Stop-Work Order

OHA may, at any time, by written notice to the Grantee, require the Grantee to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Grantee shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

a. Cancel or modify the stop work order by a supplementary written notice; or

b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10; Default; Remedies; and Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the Grantee, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

12. Limitation of Liabilities

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9. OR SECTION 10.e.(1), NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

13. Insurance

Grantee shall maintain insurance as set forth in Exhibit C, attached hereto.

14. Records Maintenance, Access

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Grantee's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that OHA and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee shall retain and keep accessible all Records for the longer of:

a. six years following final payment and termination of this Agreement;

b. the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or

c. until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

15. Information Privacy/Security/Access

If the Work performed under this Agreement requires Grantee or, when allowed, its sub Grantee(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Grantee access to such OHA Information Assets or Network and Information Systems, Grantee shall comply and require any sub Grantee(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

16. Force Majeure

Neither OHA nor Grantee shall be held responsible for delay or default caused by fire, riot, acts of God, power outage, government fiat, terrorist acts or other acts of political sabotage, civil unrest, labor unrest, or war, where such cause is beyond the reasonable control of OHA or Grantee, respectively. Grantee shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

17. Foreign Grantee

If Grantee is not domiciled in or registered to do business in the State of Oregon, Grantee shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement.

18. Assignment of Agreement, Successors in Interest

a. Grantee shall not assign or transfer its interest in this Agreement without prior written consent of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.

b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

19. Sub Agreements

Grantee shall not enter into any sub Agreements for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, Grantee shall include in any permitted sub-Agreement under this Agreement provisions to ensure that OHA will receive the benefit of sub Grantee performance as if the sub Grantee were the Grantee with respect to Sections 1, 2, 3, 4, 5, 8, 9, 14, 15, 17, 18, 19, and 20 of this Exhibit B. OHA's consent to any subagreement shall not relieve Grantee of any of its duties or obligations under this Agreement.

20. No Third Party Beneficiaries

OHA and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that Grantee's performance under this Agreement is solely for the benefit of OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

21. Amendments; Waiver; Consent

OHA may amend this Agreement to the extent provided in the solicitation document, if any, from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, the Department of Administrative Services and Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

22. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining

terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

23. Survival

Sections 1, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, and 23 of this Exhibit B shall survive Agreement expiration or termination, as well as those provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any default by Grantee that has not been cured.

24. Notice

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing, by personal delivery, facsimile, or mailing the same, postage prepaid, to Grantee or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section 24. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee. Notwithstanding the foregoing, to be effective against OHA, any notice transmitted by facsimile must be confirmed by telephone notice to OHA's Office of Agreements and Procurement number listed below or any such telephone number OHA may provide by written notice to Grantee.

OHA:	Office of Contracts & Procurement Oregon Health Authority 800 NE Oregon St., Suite 550 Portland, OR 97232 Telephone: 971-673-0747 Facsimile: 971-673-0583
GRANTEE:	As set forth on Page One of this Agreement.

25. Construction

The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.

26. Headings

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

27. Merger Clause

This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement.

28. Counterparts

This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

EXHIBIT C
Insurance Requirements

During the term of this Agreement Grantee shall maintain in force at its own expense, each insurance noted below:

1. **Required by OHA of Grantees with one or more workers, as defined by ORS 656.027.**

   Workers' Compensation: All employers, including Grantee, that employ subject workers who work under this Agreement, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide the Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements.

2. **[ ] Required by OHA [X] Not required by OHA.**

   Professional Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.

3. **[X] Required by OHA [ ] Not required by OHA.**

   General Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement. It shall provide that the State of Oregon, Oregon Health Authority (OHA) and its divisions, officers and employees are Additional Insureds but only with respect to the Grantee's services to be provided under this Agreement.

4. **[ ] Required by OHA [X] Not required by OHA.**

   Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that the State of Oregon, Department of Human Service and their divisions, officers and employees are Additional Insured but only with respect to the Grantee's services to be provided under this Agreement.

   Automobile Liability insurance with a combined single limit, or the equivalent, of not less than the Oregon Financial Responsibility Law (ORS 806.060), for each accident, for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. **Notice of cancellation or change**. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Grantee or its insurer(s) to OHA;

6. **Certificates of insurance**. As evidence of the insurance coverages required by this Agreement, the Grantee shall furnish acceptable insurance certificates to OHA upon request. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the State. The Grantee shall be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance, as applicable.

EXHIBIT D
Required Federal Terms & Conditions

Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Grantee shall comply and, as indicated, cause all sub-Grantees to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Grantee, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions**

Grantee shall comply and cause all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, Grantee expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990, (d) Executive Order 11246, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. **Equal Employment Opportunity**

If this Agreement, including amendments, is for more than $10,000, then Grantee shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. **Clean Air, Clean Water, EPA Regulations**

If this Agreement, including amendments, exceeds $100,000 then Grantee shall comply and cause all sub Grantees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal Agreements, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, HHS and the appropriate Regional Office of the Environmental Protection Agency. Grantee shall include and cause all sub Grantees to include in all Agreements with sub Grantees receiving more than $100,000, language requiring the sub Grantee to comply with the federal laws identified in this section.

4. **Energy Efficiency**

Grantee shall comply and cause all sub Grantees to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163).

5. **Truth in Lobbying**

The Grantee certifies, to the best of the Grantee's knowledge and belief that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal Agreement, grant, loan or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Agreement, grant, loan or cooperative agreement, the Grantee shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The Grantee shall require that the language of this certification be included in the award documents for all subawards at all Milestones (including subcontracts, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients and sub Grantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

6. **HIPAA Compliance**

As a Business Associate of a Covered Entity, OHA must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and OHA must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of OHA related to this Contract are covered by HIPAA. Contractor shall determine if Contractor will have access to, or create any protected health information in the performance of any Work or other obligations under this Contract. To the extent that Contractor will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, OHA as specified in the Contract, Contractor shall comply and cause all subcontractors to comply with the following:

a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health

Information relating to specific individuals may be exchanged between Contractor and OHA for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate OHA Privacy Rules, OAR 407-014-0000 *et. seq.*, or OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at https://apps.state.or.us/Forms/Served/DE2090.pdf or may be obtained from OHA.

b. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with OHA or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.

c. Consultation and Testing. If Contractor reasonably believes that the Contractor's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the OHA Information Security Office. Contractor or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the OHA testing schedule.

d. Contractor and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.

7. Resource Conservation and Recovery

Grantee shall comply and cause all sub Grantees to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247.

8. Audits

a. Grantee shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

9. Debarment and Suspension

Grantee shall not permit any person or entity to be a sub Grantee if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties

Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Grantees declared ineligible under statutory authority other than Executive Order No. 12549. Sub Grantees with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Drug-Free Workplace

Grantee shall comply and cause all sub contractors to comply with the following provisions to maintain a drug-free workplace: (i) Grantee certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Grantee's workplace or while providing services to OHA clients. Grantee's notice shall specify the actions that will be taken by Grantee against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Grantee's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in Section 10., Subsection (i) above; (iv) Notify each employee in the statement required by Section 10., Subsection (i) that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; (v) Notify OHA within 10 days after receiving notice under Section 10., Subsection (iv) from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of Section 10., Subsections(i) through (vi); (viii) Require any sub Grantee to comply with Section 10., Subsections (i) through 10(vii); (ix) Neither Grantee, or any of Grantee's employees, officers, agents or sub Grantees may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Grantee or Grantee's employee, officer, agent or sub Grantee has used a controlled substance, prescription or non-prescription medication that impairs the Grantee or Grantee's employee, officer, agent or sub-Grantee's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of the Agreement.

11. Pro-Children Act

Grantee shall comply and cause all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.).

12. Medicaid Services

Grantee shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).

b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).

c. Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.

d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Grantee shall acknowledge Grantee's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

e. Entities receiving $5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, Grantees and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).

13. Agency-based Voter Registration

Grantee shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

EXHIBIT E
Required Sub Grantee Provisions

(RESERVED)

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EXHIBIT F

RFGP 3320 and Grantee Proposal

All documents, Exhibits, and Attachments listed above are on file at OHA

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