



**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 January 18th public hearing. However, this public hearing was cancelled due to inclement weather and rescheduled for February 15, 2012.

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

Date: Prepared for February 15, 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 Modernize language that is not compliant with state law, incorrect, or out of date.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: Todd R. Cornett, Siting Officer, Oregon Department of Energy
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: Wasco County Land Use and Development Ordinance Change Overview.

Note: Attachment A identifies proposed changes to Chapters 1, 2, 3, 4 and 15, which are not considered substantial. Because the bulk of the substantive changes related these proposed amendments are located in Chapter 19, the text of the entire amended Chapter 19 is included in Attachment A.

I. APPLICABLE CRITERIA

Wasco County Land Use & Development Ordinance (LUDO)

- Chapter 9 – Ordinance Amendments
- Section 9.030 (Transportation Planning Rule Compliance)
- Section 9.050 (Amendments to the Zoning Ordinance)
- Section 9.060 (Recommendation on Amendments to the Land Use and Development Ordinance)
- Section 9.070 (Notice of Planning Commission Recommendation)
- Section 9.080 (Action by County Governing Body)

II. SUBMITTED COMMENTS

The following comments were submitted in writing and made part of the record.

Planning Commission Hearing #1:

- *Elaine Albrich – Stoel Rives, LLP*
- *Gary Casady*
- *Keith Wesolowski*
- *Jason S. Spadaro, President, SDS Lumber*
- *David Evans (letter submitted by Jason Spadaro)*

Planning Commission Hearing #2:

- *Mike Greczyn, E-on Climate & Renewables - 5/12/2011*
- *Rick Till, Friends of the Columbia River Gorge - 5/27/2011*
- *Albrich, Stoel Rives, LLP Comments- 6/7/2011 (Attachment to Albrich letter - Wind Turbines & Health)*
- *For Those Near, the Miserable Hum of Clean Energy, New York Times - 6/7/2011*
- *Turbines too Loud?, Here, Take \$5,000 New York Times - 6/7/2011*
- *Wind Turbines, Noise and Health - 6/7/2011*
- *Setbacks around every turbine, East Oregonian - 6/7/2011*
- *Fred Justesen Comments - 6/7/2011*
- *Fred Justesen Comments (2) - 6/7/2011*
- *John Justesen Comments - 6/7/2011*
- *Krista Gordon, Clipper Windpower Dev. Co. Comments - 6/7/2011*
- *Rick Till, Friends of the Columbia Gorge Comments - 6/7/2011*
- *Sandee Burbank Comments - 6/7/2011 (Additional Burbank Comments - 6/7/2011)*
- *Larry Ashley Comments - 6/7/2011*
- *Summit Ridge Wind Farm, Draft Proposed Order-Or Dept of Energy - 6/7/2011*

- *Glenrock wind farms could be first in U.S. with radar-controlled lights – Billings Gazette – 5/18/2011*
- *Federal Aviation Administration Memorandums – 6/15/2009 and 4/29/2010*

Board of Commissioners Hearing #3 (cancelled January 18, 2012, rescheduled to February 15, 2012):

- *Gary Casady Comments -1/18/2012*
- *Nancy Sellers Comments – 1/18/2012*
- *Joella Bullock Comments – 1/18/2012*
- *John Sivertooth-Stewart Comments- 1/18/2012*
- *Portland General Electric Comments – 1/18/2012*
- *ISC Wyoming -7/18/2011*
- *Friends of the Columbia Gorge – 1/17/2012*
- *Michael Stevens Comments – 1/17/2012*
- *Nick Leitschuch Comments – 1/17/2012*
- *Claire Puchy Comments - 1/16/2012*
- *Mark Womble Comments – 1/16/2012*
- *Mimi Maduro Comments – 1/16/2012*
- *Daniel Dancer Comments –1/15/2012*
- *David Bullock Comments – 1/14/2012*
- *Wasco County Setback Petition – 7/11- 1/12*
- *Friends of the Columbia Gorge – 12/17/2011*
- *Excerpt from Wasco County Planning Commission Recommendation- 6-7-2011*
- *Radar Light-FAA Maine – 4/29/2010*
- *FAA Memo – 6/15/2009*

III. PUBLIC INVOLVEMENT

In addition to the hearings indicated associated with this legislative process, all of which will allow public testimony and the ability to provide prior written comments, Wasco County has included the following measures to ensure the process is open to the public.

A. Community Advisory Groups

The Wasco County Planning Department began this legislative amendment process by convening two advisory groups with members appointed by the County Court (now Board of Commissioners). The intent of each group was to have members with a diversity of background and interests assisting staff in creating the draft amendments to be presented to the planning commission. The agenda and documentation presented at each meeting was included on the planning department website throughout the process. While not advertised in the paper, meetings were open to non-advisory group members. Those who regularly attended meetings also received emails of upcoming meeting and the documents to be used at the meetings.

It was not the goal of the advisory groups to produce a consensus draft. While the majority of the proposed amendments were reached through consensus some were not. Staff has provided options where consensus could not be reached and tried to include comments to document where language was proposed but may not be agreed upon by everyone. Updates to areas of the comprehensive plan and LUDO unrelated to energy were done entirely by staff.

While not every member attended meeting and some chose to participate solely by email or through discussions with staff, the input from each member was invaluable.

1. Non-Commercial Advisory Group

Membership and General Group Represented

1. Vicki Ashley - Planning Commission/Cattle Ranchers
2. Ken Bailey - Cherry Orchardist
3. Mark Cherniack - Rural Resident/Renewable Energy Expert
4. Jeff Davis - Wasco Electric Cooperative
5. Sherry Holliday - County Commission
6. Jeremy Thompson - Oregon Department of Fish & Wildlife
7. Bob Krein - Consultant/Farmer
8. Todd LeFevre - Renewable Energy Installer/Expert
9. Lane Magill - Wasco County
10. John McElheran - Farmer
11. Paul Titus - Northern Wasco PUD

Meeting Dates

1. 10 February 2010
2. 25 February 2010
3. 17 March 2010
4. 14 April 2010
5. 3 May 2010
6. 25 May 2010
7. 10 June 2010
8. 1 September 2010

2. Commercial Advisory Group

Membership and General Group Represented

1. Elaine Albrich - Stoel Rives LLP
2. Adam Bless - Oregon Department of Energy
3. Gary Casady - Rural Residents
4. Jeff Davis - Wasco Electric Cooperative
5. John Fulton - Farmer
6. Scott Hege - Rural Resident
7. Don Hoffman - Planning Commission
8. Jim Johnson - Oregon Department of Agriculture
9. Jeremy Thompson - Oregon Department of Fish & Wildlife
10. Bob Krein - Consultant/Farmer
11. Dwight Langer - Northern Wasco PUD
12. Bill Lennox - County Commission
13. Lane Magill - Wasco County
14. Allyson Smith - North Central Public Health District
15. Paul Woodin - Community Renewable Energy Association

Meeting Dates

1. 11 February 2010
2. 23 February 2010
3. 11 March 2010
4. 6 April 2010
5. 17 May 2010
6. 2 June 2010
7. 15 June 2010
8. 30 June 2010
9. 12 July 2010
10. 9 August 2010

11. 23 August 2010
12. 8 September 2010

B. Agency Solicitation

The following agencies were contacted for their input on the entire draft ordinance or specific proposed language. These agencies have been notified during the hearings process and be given the opportunity to provide further comments.

- Oregon Water Resources Department - Numerous occasions during advisory group process.
- Mid-Columbia Fire and Rescue - May 2010
- Wasco County Road Department - June 2010
- Oregon Department of Transportation - June 2010
- Oregon Department of Aviation - June 2010
- Wasco County Soil & Water Conservation District - July 2010
- Mid-Columbia Building Codes - July 2010
- Department of Land Conservation & Development(DLCD) – In September 2010 of 2010 staff send the proposed amendments to Katherine Daniels, the DLCD Farm and Forest Specialist for her input. Ms. Daniels was very helpful in providing advice and necessary changes which were included.
- Mid-Columbia Economic Development Department – December 2010
- Tri County Hazardous Waste and Recycling Program – December 2010

C. Direct Mail Notification

DLCD Pre-Notice:

Pursuant to ORS 197.610, a pre-notice was sent to DLCD on 20 January 2011 which is more than 45 days prior to the 1st planning commission Hearing scheduled for May 3, 2011.

Planning Commission Hearing #1 & #2:

An ORS 215.503 (Measure 56) compliant notice was sent by mail and email on 28 March 2011. This notice was sent to the following: (1) every property owner within Wasco County outside of the National Scenic Area and outside of urban growth boundaries; (2) any person or agency having a subscription to receive Administrative decisions; and (3) any other local, state and federal agency that may be interested in the proposed changes. The notice referenced both planning commission hearings. The planning commission hearing #1 was held on for May 3, 2011 with a notice sent more than 20 days in advance. The planning commission hearing #2 was held on June 7, 2011. Because this was a continuation of the hearing #1 no notice was required.

Board of Commissioners Hearing:

Any person or group or their representative who submitted written comments, or requested in writing to receive notification of the hearing, or signed in and testified at either planning commission hearing received direct notification by mail of the date, location and time of the Board of Commissioner Hearing originally scheduled for January 18, 2012 and rescheduled to February, 2012 at least 10 days prior to the hearing.

DLCD Post-Notice:

Pursuant to ORS 197.615, Wasco County will provide notice to DLCD and any other group, agency or individual who submits written comments, requests in writing to receive notification of the hearing, or signs in and testifies at any of the hearings within 5 days of

the final decision by the Board of Commissioners.

D. Newspaper Notification

Planning Commission Hearing #1:

The notice for planning commission hearing #1 was published in The Dalles Chronicle on April 5, 2011 which is 20 days prior to the hearing date, May 3, 2011.

Planning Commission Hearing #2:

Planning commission hearing #2 was a continuation of Hearing #1 and therefore no notification was required.

Board of Commissioner Hearing:

The notice for Board of Commissioner Hearing was published in The Dalles Chronicle on January 31, 2012 which is 15 days prior to the February 15, 2012 hearing.

E. Information Available on Website

The information regarding the proposed amendments began to be placed on the Wasco County Planning Department Website starting in February 2010:

- <http://co.wasco.or.us/planning/default.html>
- http://co.wasco.or.us/planning/Energy_updates_Main.html

As updates were made following each advisory group meeting or hearing, the information on the website was updated. At the time of this document, the following information was available:

- A listing of the Advisory Group meeting dates, times locations as well as all the documentation used in each meeting.
- A listing of the hearing dates, times and locations.
- The drafts of the proposed amendments at each step along the process.
- Staff report describing the process and changes.
- A way to submit comments via email.

IV. FINDINGS

LUDO CRITERIA

1. Chapter 9 – Ordinance Amendments

a. Section 9.030 - Transportation Planning Rule Compliance

FINDING: Transportation Planning Rule Compliance was evaluated. Specific findings are contained in the staff report prepared for the Board of Commissioners December 7, 2011 public hearing (Section I, page 7).

b. Section 9.050(A) Amendments to the Zoning Ordinance

Amendments to this Ordinance may be initiated by Resolution of the County Governing Body referring a proposed amendment to the Commission for its consideration, report and recommendation.

FINDING: The Wasco County Court (now Board of Commissioners), in a resolution dated July 1, 2009, authorized the County Planning Department to initiate a Land Use and Development Ordinance Text Amendment to update Chapter 19 – Energy Facilities and associated chapters and to make other amendments appropriate for Wasco County. The proposed amendments were heard first by the Wasco County Planning Commission. Their recommendation and report has been forwarded to the Board of Commissioners as part of the packet of information required for this hearing. Records related to this decision are located in the file held at the Wasco County Planning Department.

- c. Sections 9.060 Recommendation on Amendments to the Land Use and Development Ordinance.

After hearing, the Approving Authority shall recommend that the proposed amendment to the Zoning Ordinance be granted or denied. The Director of Planning or his assistants shall reduce to writing the Planning Commission's recommendations together with a brief statement of the facts and reasons upon which such recommendation is based.

FINDING: The request is consistent with criterion c.

- The planning commission conducted a legally notified hearing on May 3, 2011 at 3:00 PM in the lower level classroom of the Discovery Center at 5000 Discovery Drive, The Dalles, Oregon. Staff presented their report and those in the audience had an opportunity to provide testimony.
- The planning commission conducted a second hearing (continuation of the first) on June 7, 2011 at 3:00 PM in the lower level classroom of the Discovery Center at 5000 Discovery Drive, The Dalles, Oregon. Staff presented their report and those in the audience had the opportunity to provide testimony.
- Criterion c. was adhered to in two ways. The first was in the form of a notice of the planning commission recommendation to all persons who provided written comments or testified at either hearing and all affected agencies. This notice included a very brief statement indicating the recommendation.
- The second is in the form of this report, should anyone wish to find a more detailed statement of facts. This report will be available on the Wasco County website before and after each hearing and upon request at the Wasco County Planning Department. This report will (or has) transform throughout the process according to the following:
 - At the planning commission hearing(s) the first draft of this report which includes all of the facts and reasons to support the decision was presented to the commission in the form of a Staff Recommendation.

- Following, at the Board of Commissioner's hearing, the Staff Recommendation is now titled the Planning Commission Report and includes any additional facts and reasons to the support the decision made by the planning commission.
- A final version which is the Board of Commissioners Report includes any additional facts and reasons to support the decision made by the Board of Commissioners.

d. Section 9.070 Notice of Planning Commission Recommendation.

Within ten (10) days of the final Planning Commission hearing, the Director of Planning or his assistants shall give notice thereof to any persons who signed in and testified at the hearing and to such other persons as may have requested the same in writing.

FINDING: Criterion d was met.

- All persons or agencies, or their representatives who submitted written testimony or provided oral testimony at either of the planning commission hearings or have requested to receive notification of the action of the planning commission were sent a notice of the vote of the planning commission on June 16, 2011 which is less than 10 days after the final planning commission hearing on June 7, 2011.

e. Section 9.080 Action by County Governing Body

Upon receipt of the Commission report, the County Governing Body shall take such action as may appear appropriate to that body, or as it feels the public interest requires, provided that in no event shall the County Governing Body act until at least twenty (20) days after the Notice of Planning Commission Recommendation has been mailed.

FINDING: Criterion e will be met.

The second planning commission hearing was held on June 7, 2011. The Board of Commissioners hearing was scheduled for January 18, 2012 and was cancelled due to inclement weather. The hearing was then rescheduled for February 15, 2012.

Staff mailed the planning commission recommendation on June 16, 2011, which is more than twenty (20) days prior to the Board of Commissioners public hearing. At this hearing the Board of Commissioners will take such action that they feel is appropriate and in the public interest.

-END-