

WIND ENERGY TASK FORCE



REPORT AND RECOMMENDATIONS

DECEMBER 14, 2009



December 14, 2009

To: Association of Oregon Counties Board of Directors
From: Commissioner Steve McClure, Chair, Wind Energy Task Force
Subject: Transmittal of AOC Wind Energy Task Force Report and Recommendations

I am please to transmit the final report and recommendations of the AOC Wind Energy Task Force to AOC's Board of Directors. The report represents the product of a year-long collaborative process by county elected officials, county planners, state agencies and other interested parties.

The Task Force's draft report and recommendations were presented at AOC's Fall Conference, at the Portland Marriott Waterfront Hotel, on Thursday, November 19, 2009. Our final report has been amended to reflect the comments and suggestions received at the presentation at Fall Conference. The Application Submittal/Complete Application section on pages 5 and 6 of the report has been amended to include identification of existing cell towers and other wind towers which may need to be considered in the siting process, construction and post construction traffic impacts and the need for a wildfire management plan.

The Association of Oregon Counties Board created the Wind Energy Task Force in November 2008 to pursue uniform wind energy review guidelines for consideration of commercial wind energy projects up to 105 megawatts through the county land use permitting process. The Task Force was charged with developing review guidelines that could ultimately become a part of each county's land use regulations and conditional use process.

The Task Force identified a number of other county concerns/issues related to wind energy development in addition to siting standards and the process for consideration of wind energy facilities. These concerns/issues include:

- Requesting Energy Facilities Siting Council (EFSC) rulemaking to amend Administrative Rules and removal of the requirement that EFSC create Energy Generation Areas (EGA).
- Clarify and resolve County and State siting authority.
- Decommissioning and Bonding – develop a white paper and list of considerations.
- Counties may want to consider adopting a provision that allows them to defer a project to EFSC regardless of the project size.
- Recommendations to improve EFSC process.

- Noise safe haven – is there a distance?
- Regional and/or interstate transmission consideration/impacts.
- Goal 4 (Forest Lands) Administrative Rule Amendments for the siting of wind energy facilities.

In an effort to address its primary charge, the Task Force choose to advance a list of issues and concerns should AOC determine that some or all of these recommended items be addressed in the future.

The attached guidelines are not intended to be a “model ordinance” but rather features counties should (may) consider when customizing their own review process and requirements for commercial wind energy facility applications under 105 megawatts of production.

**AOC
Wind Energy Task Force
County Review Guidelines
December 14, 2009**

BACKGROUND

The Association of Oregon Counties (AOC) Board of Directors created the Wind Energy Task Force in November 2008 to pursue uniform wind energy review guidelines for consideration of commercial wind energy projects up to 105 megawatts (MW) through the county land use permitting process. The Task Force was charged with developing review guidelines that could ultimately become a part of each county's land use regulations and conditional use process.

Purpose Statement

To provide guidelines for siting and to identify issues to consider when permitting a commercial wind development project. The purpose is also to create consistency among counties and to provide clarity to the project developer relative to the review process. Further clarification of the process will insure a uniform assessment and mitigation of impacts.

Principles and Issues

The AOC Wind Energy Task Force worked with Oregon Department of Energy, Oregon Department of Fish & Wildlife (ODFW), US Fish & Wildlife Service and other interested parties to develop principles to guide their work. The Task Force also identified a list of issues relative to the siting of commercial wind generation facilities:

Principles:

- Establish a clear application process for wind energy applications.
- Utilize clear and objective criteria for evaluation of applications.
- Create a consistent and accountable application process.
- Collaborate and coordinate with agencies and other stakeholders.

Issues:

- Scenic protection
- View shed
- Agricultural lands



- Forest lands
- Wildlife & wildlife habitat
- Noise
- Flicker
- One project/multiple projects
- Setbacks
- Decommissioning
- Transportation facilities - roads and infrastructures
- Energy generation areas
- Blasting impacts (wells)
- Transmission (as part of the project)
- Weeds
- Perceived Impacts or non-quantifiable impacts
- Erosion control

A list of recommended elements has been developed to be included in individual county Conditional Use review requirements. These elements are, in part, standards and processes commonly found in a county’s land development codes. Throughout Oregon, counties have varying ways they process Conditional Use applications. Some counties use hearings officers, most counties utilize the Administrative Review process outlined in Oregon Revised Statute (ORS) for quasi-judicial decisions, while some smaller counties process Conditional Use applications through an appointed planning commission. In addition, some counties have already adopted detailed review requirements for wind energy projects, while others have general criteria. Therefore, these elements are not intended to be a “model ordinance,” but rather, elements to be incorporated in local land use regulations and/or processes.

The review elements are intended to supplement current state agricultural lands requirements found in ORS 215.283(2)(g) “Commercial utility facilities for the purpose of generating power for public use by sale” and OAR 660-033-0120 & -0130.

The elements were developed based on the Purpose Statement and are intended to identify more uniform evaluation requirements and procedures among counties.

ELEMENTS of SITING LARGE (LESS THAN 105 MW) WIND PROJECTS

Scale of Operation/Size of Project

Permitting process for each proposed project may be evaluated based on the following categories:

- Net metering projects (county jurisdiction/non-commercial activity)



- Commercial projects up to 104 MW (County jurisdiction)¹
- Over 104 MW projects (Energy Facilities Siting Council (EFSC) jurisdiction - ORS 469.300)
- The Task Force recommends that each county identify and define which projects are commercial and what projects are not commercial. However, the Task Force recognizes that there are other standards and definitions (such as the federal Public Utility Regulatory Policy Act (PURPA) standard). Additionally, the Task Force recognized that every project, regardless of size is a commercial activity and should be reviewed as such.

Met Tower Siting

Met towers under 200 feet tall [ORS 215.283(1)(d)] are a permitted use in exclusive farm use zones that are reviewed by county planning departments ministerially. The applicants and the county should identify the following at the time of met tower ministerial review:

- Encourage applicant to contact applicable agencies, such as ODFW, to consult about the project and identify agency concerns.
- Local jurisdiction will provide to the developer information concerning future application information.
- Met tower siting under 200 ft. is a ministerial action (approval via a zoning permit, but not a “land use decision.”)

Met towers over 200 feet tall [ORS 215.283(2)(m)] are nonfarm uses subject to county Conditional Use review requirements in exclusive farm use zones.

Pre-application Conference

A pre-application conference is an opportunity for the applicant and county to identify and discuss the process and information relevant to the application. The pre-application conference is intended to be a conversation between the applicant, staff and affected agencies. It is not considered to be a public meeting. Topics to discuss in the pre-application conference include:

Process Explanation

- Completeness
- Pre-notice
- Administrative review or public hearing
- Appeal period
- Approval conditions

¹ Projects from net metering up to 10 MW are subject to County jurisdiction but may also qualify for federal Public Utility Regulatory Policy Act (PURPA) benefits, therefore may need to follow a dual process.



Invite Applicable Federal, State and Local Jurisdictions and Agencies

- State agencies (ODFW and other applicable agencies)
- Federal agencies (USFWS, BLM and other applicable agencies)
- Local jurisdictions (cities and counties)
- Local agencies (public works, special districts and other applicable agencies)
- Others as necessary (Utility companies and other interested parties)

Cost

- Inform applicant of local costs, including:
 - Regular application fee
 - Hiring outside assistance (if necessary)
 - Reimbursement agreement
 - Other potential costs
 - For example state agencies may require compensation for staff time and/or require third party studies. (Note: It is recommended that AOC coordinate with resource agencies to develop a model agreement to establish consistency and clarity.)

Information to Planning Department Prior to a Pre-Application Conference

In order to make the pre-application proposal as productive as possible the applicant is requested to submit the following:

- Project boundary, project participants and land owner consent
- Location of wind towers (micro-siting corridor, what size?)
- Location of permanent met towers (micro-siting corridor, what size?)
- Location of existing and proposed (new) transmission lines (micro-siting corridor, what size?) that are part of the project
- Location of temporary and permanent roads
- Location of substations
- Location of operating and maintenance facilities
- Estimate amount of aggregate that will be needed for the project, including material for road construction and footings for the turbines. If possible, identify source of material (on-site or off-site).
- Soils information to determine which new OAR process they need to go through
- Location of other known resources (cultural, historic, natural, wildlife, etc.)
- Source and quantity of water to be used during construction

Information to be provided to applicant by County at or before Pre-Application Conference

- Applicable criteria provided to applicant



- EFU or other zone applicable criteria
- Conditional Use Review criteria
- Energy review and other criteria specific to the jurisdiction (setbacks, etc.)
- OAR process based on soils information (e.g. new goal 3 rule requirements)

- Goal 5 protected areas
 - Visual (scenic and aesthetic)
 - Water
 - Flora (timing issues for pre-construction surveys & monitoring)
 - Fauna (timing issues for pre-construction surveys & monitoring)
 - Habitat maps

- Application checklist (could include information listed above).

- Other related reference materials that may inform the applicant
 - Habitat maps adopted by Western Governors Association
<http://www.westgov.org/>
 - Oregon Columbia Plateau EcoRegion Wind Energy Siting and Permitting Guidelines
 - Prior studies ODFW has conducted
 - Prior studies by wind energy applicants
 - Other reference materials

Plans Necessary for a Complete Application (see list below)

Discuss as appropriate – plans listed in the application section.

Perceived Impacts or Non-quantifiable Impacts

- Proximity to residences which may result in the following concerns:
 - Flicker
 - Noise
 - Impact to well casings due to blasting
 - Subsonic Vibrations
 - Visual

Application Submittal/Complete Application

The jurisdiction will review the application against all of the submittal requirements discussed in the pre-application meeting. If all required information has been submitted the application will be deemed complete, if not the application will be deemed incomplete and the applicant will be required to submit additional materials. The applicant can provide statements indicating how the criteria can be met. As an example, the applicant may indicate that a weed control plan will be submitted after preliminary approval and prior to construction.



A complete application will include the following:

1. Application (on form provided by county)
2. Land owner authorization(s)
3. Site plan for towers and transmission facilities (corridor plan)
4. Drawing/design of towers, transmission lines (existing and new) and substation(s)
5. Detailed site plan for all associated facilities and their relationship to on site and off site facilities such as cell towers, residences, roads and other wind turbines
6. Transportation and road management/improvement plan (on site & off site for construction and post construction traffic)
7. Weed management plan
8. Erosion control plan
9. Wildlife management plan
10. Wildfire management plan
11. Other natural resource management plans
12. Detailed visual analysis (if deemed necessary)
13. Noise study (if deemed necessary)
14. Soil de-compaction plan
15. Decommissioning plan
16. Emergency response plan
17. Right-to-farm disclaimer statement
18. Power purchase agreement/interconnect agreement



Application Review Process

County will write draft findings addressing all of the applicable review criteria. An applicant may provide draft findings for the county to review.

County Conditional Use Application Review Process

County review of wind energy facilities (“Commercial utility facilities for the purpose of generating power for public use by sale” [ORS 215.283(2)(a) and OAR 660-033-120 & -130]) are quasi-judicial “land use decisions” [ORS 197.015(10)]. Quasi-judicial land use decisions are required to meet the application, notice, public hearing and decision making requirements in ORS 197.763. Counties have the option to review such applications in a single, consolidated process where all application materials include the above items listed under **Application**

Submittal/Complete Application which are submitted at the time of the initial application, or, counties have the latitude within the statutorily prescribed process to “phase” and/or “condition” a tentative decision.

Consolidated Decision Process

The first process requires the applicant to prepare all application materials prior to submitting a complete application to the county. This process is similar to the Oregon Energy Facility Siting Council (EFSC) review process and requires a substantial up-front expenditure for application preparation. The decision from such an application generally results in an approval, conditional approval or a denial. A conditional approval usually includes non-discretionary conditions that can be submitted for staff review and verification, and no new public hearing is necessary.

Phased or Conditioned Tentative Decision Process

A second option would allow an applicant the opportunity to submit an initial application that defers completion of one or more prescribed plans; such as weed, erosion control, soil de-compaction and emergency management plans and power purchase and/or interconnection agreements. Similar to partitioning and subdividing property, counties may make a tentative decision subject to an applicant completing or meeting specific conditions. The applicant must demonstrate with findings during the initial tentative review process that deferred conditions are achievable and if completed would not result in the conditional use application ultimately being denied. For example, a deferred weed management plan could be cooperatively reviewed with a county weed control representative and adopted as a part of a final decision. A more challenging example would be a cooperative wildlife management plan required as a part of a tentative decision. The applicant and affected wildlife management agency(s) would be required to agree that a final plan can be achieved prior to a final decision. Evidence and findings in the tentative decision would need to demonstrate how a cooperative wildlife management plan would be accomplished, or in the alternative, how the



county would make a decision on a wildlife management plan as a part of the final decision. The tentative decision should specify a time limit or expiration date and the opportunity for one or more extensions. If the product from meeting the tentative approval conditions includes new evidence then a new public hearing with notice and an opportunity to submit evidence and comments on the response to the conditions is required before a final decision can be adopted. Note: Discretionary consideration of deferred items is subject to public hearings and appeal. Such public hearings are limited to consideration of the deferred items and are not subject to consideration of the entire project.

The second option allows the applicant to proceed through a two step process that defers costly plan preparations and accomplishes a tentative decision that provides the applicant a level of assurance from the county. Once the remaining conditions (plans) are completed a final land use decision can be authorized. The tentative review process can focus on the concept, location and overall compatibility of the project and the final decision can focus on the detailed siting, development and long term maintenance of the project.

Each county should determine the most desirable process for their jurisdiction and adopt that process up front as a part of their development codes so applicants and participating parties clearly understand how individual counties will process commercial wind energy applications.



AOC WIND ENERGY TASK FORCE MEMBERS AND PARTICIPANTS

TASK FORCE MEMBERS:

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Judge Pat Shaw, Gilliam County
Judge Terry Tallman, Morrow County
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