

## Wasco County Commercial Energy Draft Standards

### C. Pre-application conference

This section is not needed if the following change is made to 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)~~

### D. Application Materials –

This section is not needed if the following changes to Section 2.060 – Application, to state

An application shall be considered complete when it contains the applicable information included in the application materials 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.

### E. General Standards - The following standards apply to all energy facilities in addition to meeting the Conditional Use Standards listed in Chapter 5, Conditional Use Review:

- ~~1. Exclusive Farm Use Land – 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. This requirement is not applicable to wind energy facilities, transmission lines or pipelines. (This language as well as Soil de-compaction and other criteria relative to protection of farm land is, or will be located in the A-1 zone.)~~
- ~~2. Forest Land – If the site of a proposed energy project is in a forest zone or mixed farm and forest zone, the proposed use complies with OAR 660-006-0025(4).~~

(Goal exception language and protection of forest resources language is already included in the Forest zone)

3. Air Safety - All structures that are more than 200 feet above grade, exceed airport imaginary surfaces as defined in OAR Chapter 738, Division 70, or could be dangerous to aviation, shall comply with the air hazard rules of the Oregon Department of Aviation and/or Federal Aviation Department. The applicant shall notify the Department of Aviation and the Federal Aviation Administration of the proposed facility and shall submit documentation of any air safety conditions required by those agencies.

Aerial Sprayers and operators who have requested to be notified will receive all notifications associated with the energy facility.

4. Interference with Communications - Energy facilities shall be designed, constructed and operated so as not to interfere with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. If undue reduction or interference occurs, the applicant must restore reception to the level present before operation of the energy facility.
5. Noise - Energy facilities 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.

The applicant may exceed the standard listed above for any property that is part of the project or for any property where written permission is received from that property owner(s).

6. Visual Impact - The applicant has reduced the visual impact of construction and operation of the energy facility to the extent practical by methods that may include, but are not limited to, the following:
  - a. Avoiding state or federal scenic areas and corridors and significant visual resources listed in the comprehensive plan.
  - b. Building the energy facility near the edge of contiguous timber areas or using the natural topography to obscure the project.
  - c. Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.
  - d. Retaining or planting vegetation to obscure views of the energy project; and

- e. Setting the energy facility back from the edge of public arterial rights-of-way and from **Type F and Type D streams**.
7. Natural Resource/Wildlife Protection - The energy facility has been designed and will be constructed and operated without significant adverse impact to natural resources identified in the Wasco County Comprehensive Plan, Wasco County Land Use and Development Ordinance or by any local, state or federal wildlife agency. The applicant agrees to implement monitoring and mitigation actions that Wasco County determines appropriate after consultation with the Oregon Department of Fish and Wildlife, or other local, state or federal wildlife agencies. Measures to reduce significant impact may include, but are not limited to, the following:
- a. Providing information pertaining to the energy facility's potential 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 towers designed to reduce horizontal surfaces for perching.
  - e. Utilizing towers designed so the foundation and support structures avoid the creation of artificial habitat or shelter for raptor prey.
  - f. Controlling weeds to avoid the creation of artificial habitat suitable for raptor prey such as spreading gravel on turbine pad.
  - g. Using anti-perching protection devices on transmission line support structures and appropriate spacing of conductors.
  - h. Avoiding construction activities near raptor nesting locations during sensitive breeding periods and using appropriate no construction buffers around known nest sites.
  - i. 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.

- j. Locating transmission lines or electrical lines associated with the facility at least 50 feet from the edge of the nearest wetland or water body.
  - k. Separating transmission lines or electrical lines associated with the facility from the nearest wetland or water body by topography or substantial vegetation.
  - l. Locating transmission lines or electrical lines associated with the project parallel to the prevailing winds to the extent practical.
  - m. 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.
8. Protection of Historical and Cultural Resources - ~~Construction and operation of the proposed energy project would not cause significant adverse impact to historical and cultural resources identified by the State Historic Preservation Office or identified in the Wasco County Comprehensive Plan cultural resource inventory.~~ (Section 3.770 – Cultural Historic & Archeological Overlay already cover this. Chapter 5 also makes reference to this.)

The applicant agrees to implement a plan to preserve any previously undiscovered archeological, historical or cultural artifacts discovered during construction or operation of the energy project in compliance with ORS 358.905-358.955 and any other applicable local, state and federal law.

9. Fire Protection & Emergency Response - The applicant must have a plan to implement fire protection and emergency response measures for all phases of the life of the facility that is acceptable to Wasco County and applicable emergency response or land management agencies. The plan shall address any concerns associated with the terrain, dry conditions, limited access and how employees of the facility will receive medical attention in case of emergency.
10. Parking (This is covered by Chapter 20, Site Plan Review Section 20.050 which will be referenced by every use)
11. Public Safety: The energy facility has been designed and will be operated to protect public safety, including development and implementation of a plan of operating procedures to prevent public access to hazardous areas.
12. Transportation Plan – The applicant must have a Transportation plan developed in consultation with the Wasco County Road Department and/or the Oregon Department of Transportation reflecting any requirements from the Wasco County Transportation System Plan. That plan shall also include:
- a. Designating the size, number, location and nature of vehicle access points;

- b. Using existing roads for access to the extent practical and avoiding construction of on-site roadways as much as possible;
  - c. Constructing and maintaining access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site.
  - d. 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.
13. Erosion and Sediment Control - The applicant agrees to conduct all roadwork and other site development work in compliance with a National Pollutant Discharge Elimination System (NPDES) permit as required by Oregon Department of Environmental Quality regulations. The applicant must have an NPDES permit and an erosion and sediment control plan before beginning construction. The plan must include both general “best management practices” for erosion control during and after construction 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 - The applicant agrees to implement a plan for weed control during construction, operation and demolition of energy facility. This plan shall be developed in consultation with the Wasco County Weed Department.
15. Dust Control - The applicant agrees to construct all non-paved temporary or permanent on-site roads and staging areas using compacted baserock and gravel. During the site development and construction, the applicant must regularly water roads and staging areas as necessary to minimize dust and wind erosion. (The CUP section has a general criterion regarding controlling dust. We can be specific here or just allow the CUP criterion to take care of it.) -
16. Signs - The applicant agrees not to erect outdoor displays, signs or billboards within the energy project site, except:
- a. Signs required for public or employee safety or otherwise required by law; and
  - b. No more than two signs relating to the name and operation of the energy project (size and location??).

17. Undergrounding Systems - Where practicable the power collector and communication lines shall be installed underground, **at a minimum depth of 4 feet**; shallower depths may be authorized where notification and safety measures are taken, elsewhere the cable collector system shall be installed to prevent adverse impacts on agriculture operations.

18. Operation & Maintenance Buildings - Required permanent maintenance/operations buildings shall be located off-site in one of Wasco County's appropriately zoned areas, except that such a building may be constructed on-site if:

- a. The building is designed and constructed generally consistent with the character of similar buildings used by commercial farmers or ranchers; and
- b. The building will be removed or converted to farm use upon decommissioning of the Generation Facility consistent with the provisions of this section.

**(If we include the test for allowing related and accessory uses on non-resource lands this will not be needed)**

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

20. Termination and Decommissioning

- a. A description of actions the facility owner proposes to take 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. A current detailed cost estimate, a comparison of that estimate with present funds setaside for dismantling or decommissioning, and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate will be reviewed and be updated by the facility owner/operator on a 5 year basis.
- c. The applicant agrees to the following as conditions of the land use permit:
  - (1) If the applicant ceases operation of the energy facility or begins, but does not complete, construction of the project, the applicant shall restore the site according to a plan approved by Wasco County. The applicant shall

submit a plan that ensures that 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 (at least four feet in cropland)**. 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 applicant must submit a bond or letter of credit in a form and amount satisfactory to Wasco County, assuring the availability of adequate funds to restore the site to a useful, non-hazardous condition naming Wasco County and the landowner as beneficiary or payee. **(There are different ways this can be done. On a project by project basis. Pay into a fund like an insurance pool.**

At the front end of the project. A couple of years into the project. Look at the way this is being done in Union County)

- (3) The amount of the bond or letter of credit shall be 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 applicant shall increase the amount of the bond or letter of credit 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 bond or letter of credit account shall be prorated within the year to the date of decommissioning.
  - (4) The certificate holder shall describe the status of the bond or letter of credit in an annual report submitted to Wasco County.
  - (5) The bond or letter of credit shall not be subject to revocation or reduction before retirement of the energy facility site.
  - (6) If any disputes arise between Wasco County and the landowner on the expenditure of any proceeds from the bond or the letter of credit, either party may request non-binding arbitration. Each party shall appoint an arbitrator, with the two arbitrators choosing a third. The arbitration shall proceed according to the Oregon statutes governing arbitration. The cost of the arbitration (excluding attorney fees) shall be shared equally by the parties.
21. Final Location - The actual latitude and longitude location or Oregon State Plane NAD83 HARN (international feet) coordinates of each turbine tower, power collector lines, communication lines and transmission lines, or pipelines shall be provided to the Wasco County GIS Department once commercial electrical production begins.
22. Annual Review (This may be a way to deal with multiple conditions of approval.)
- a. Within 120 days after the end of each calendar year the facility owner/operator shall provide Wasco County an annual report including the following information:
    - (1) Energy production by month and year where required by state reporting requirements.
    - (2) Non-proprietary information about wind conditions. (e.g. monthly averages, high wind events, bursts)

- (3) A summary of changes to the facility that do not require facility requirement amendments.
  - (4) A summary of the avian monitoring program - bird injuries, casualties, positive impacts on area wildlife and any recommendations for changes in the monitoring program.
  - (5) Direct employment statistics from the project in Wasco County during and after construction.
  - (6) Success or failures of weed control practices.
  - (7) Status of decommissioning fund
  - (8) Summary comments - any problems with the projects, any adjustments needed, or any suggestions.
- b. The annual report requirement may be discontinued or required at a less frequent schedule by the County. The reporting requirement and/or reporting schedule shall be reviewed, and possibly altered, at the request of the facility owner/operator. For facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.
- F. Specific Standards - The following standards apply to specific types of energy projects as described in addition to the General Standards in **Section XXX above**.
1. Wind Energy Generation
- a. Wind Resources. The site shall have site-specific data documenting wind speed and direction or off-site data from within the same topoclimatological zone as the proposed site. **(This is in the current ordinance. Is this proprietary information?)**
  - b. Visual Impact: To the extent practical, the proposed wind energy project 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 - Using the minimum lighting necessary for safety and security purposes in addition to aviation warning lights required by federal or state law. To the extent possible, the lighting shall be shielded from the ground in a manner that prevents it from projecting onto adjacent properties, roadways, waterways, as well as preventing it from noticeably contrasting with the surrounding landscape.

- (4) Using existing roads to provide access to the site, or if new roads are needed, minimizing the amount of land used for new roads and locating roads to reduce visual impact and other adverse environmental impacts such as erosion.
  - (5) Using existing substations, or if new substations are needed, minimizing the number of new substations.
  - (6) Flicker - **WECS'** shall be sited in a manner that does not result in significant shadowing or flicker impacts to non-project residences. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
- c. Public Safety: The wind energy facility has been designed and will be operated to protect public safety by measures that may include, but are not limited to, the following:
- (1) Designing turbine blades so that 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.
  - (2) Designing, constructing and operating the facility to exclude the public from close proximity to turbine blades and electrical equipment.
  - (3) Designing, constructing and operating the facility to protect against structural failure of the turbine tower or blades that could endanger the public safety and have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.
  - (4) Restricting public access to the interior of tubular turbine towers by installing locked access doors.
- d. Setbacks
- (1) Property Boundaries - Wind Turbines and all of their above-ground parts shall be set back from the property line of an abutting property by a distance that is at least **1.5 times** the height of the wind turbine structure, including the highest point of a turbine blade. If the wind energy project extends onto the abutting property neither the wind turbine setback nor the property line setbacks of the zone in which they are located are applicable.

Towers shall be allowed closer to a property line, public-right-of-way, or above ground public utility line than 1.5 times the height of the tower

without a variance pursuant to either Chapter 6 or 7 if granted written permission from the property owner, road authority, or utility or an easement pursuant to ORS 105.900-915.

Notwithstanding receiving permission from an adjacent property owner, road authority or utility, wind turbines shall still be required to meet the property line setback of the zone in which they are located unless a variance is granted pursuant to either Chapter 6 or 7.

- (2) Natural Resources - Notwithstanding any other provision in this chapter, all wind turbines, their above ground parts and applicable related and accessory facilities shall meet all natural resource buffers unless a variance is granted pursuant to Chapter 6 or 7.
- (3) Dwellings - Do we want to include any setbacks for dwellings that may be on the same property? What about additional setbacks beyond (1) above for dwellings on adjacent properties.
- (4) Non-Resource Properties - Wind turbines shall be setback from all non-resource zoned properties a minimum of XXXXXXXXXXXX or as described in (a) and (b) below, whichever is less. This setback shall not be applicable to any non-resource zoned property where a wind turbine is being sited as part of the wind energy facility.
  - (a) At least 20 rotor diameters for a horizontal axis WECS.
  - (b) At least 10 WECS heights for a vertical axis WECS.
- (5) Related or Supporting Facilities - Except for linear facilities such as power collector lines and roads, all related or supporting facilities shall meet the property development setbacks of the zone in which they are located.
- (6) Downwind Properties (Sherman County language)  
The following are only applicable to towers 200' in height or taller.

Towers shall be set back five rotor diameters from the downwind property lines in the direction of the dominant winds across the property, and two diameters from all other property lines and county boundaries unless it can be demonstrated that a lesser setback can protect the wind access for the downwind properties.

The project developer is encouraged to negotiate setback distances from wind turbines on the outer edges of the project to the outer boundary lines of the project with owners or developers of adjacent projects or adjacent property owners outside the project.

In the event the project developer is unable or unwilling to negotiate boundary setbacks, then the following shall apply.

Setback from all property lines in all East-West upwind downwind directional property line installation shall be no less than 7.5 times the rotor diameter and no less than 1.5 times the rotor diameter for all North-South property line delineations.

The minimum setback requirements from pre-existing wind turbines shall be 15 times the rotor diameter upwind and downwind for all East-West setback considerations and 3 time the rotor diameter for all North-South setback considerations.

The minimum setback distance from an operating wind turbine to the boundary lines of any incorporated city shall be a distance of one (1) mile.

## 2. Solar Energy Systems

- a. Ground Leveling - The solar energy facility has been designed and would be constructed so that ground leveling is limited to those areas needed for effective solar energy collection and so that the natural ground contour is preserved to the greatest extent practical.
- b. Misdirection of Solar Radiation - The solar energy facility has been designed and would be operated to prevent the misdirection of concentrated solar radiation onto nearby property, public roads or other areas accessible to the public.
- c. Glare - The solar energy facility shall be located such that any significant or prolonged glare is directed away from an adjoining property or roadway.
- d. Cleaning Chemicals and Solvents - During operation of the solar energy facility, all chemicals or solvents used to clean photovoltaic panels or heliostats would be low in volatile organic compounds and the operator would use recyclable or biodegradable products to the extent possible.

## 3. Cogeneration

- 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 or Distribution Lines**

**Applicable to all distribution lines? Right now the EFU allows "Utility Facility Service Lines", which are distribution lines, without review.**

- 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 and would not increase the width of the clearing for the existing right-of-way or easement by more than [50] percent and not beyond a maximum width of [125] feet.
- c. New Routes - If all or part of the proposed transmission or distribution line is outside an existing route or not adjacent to an existing route, the permanent right-of-way for the new transmission line route would not exceed [50] feet in width, and:
  - (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. Visual Effects - The facility considers visual effects by means including but not limited to the following:
  - (1) Avoiding ridgelines, scenic areas, unique or significant views and vistas, hilltops, or other high or visually prominent areas.
  - (2) Building the facilities near the edge of contiguous timber areas or in swales, dips, and depressions that provide a backdrop for or obscure the facility to the extent these features are available between the ends of the facility.

- (3) Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or Oregon Department of Aviation.
- (4) Setting development back from the edge of public arterial rights-of-way, Class I and II streams, viewpoints, and other significant visual resources identified in the comprehensive plan and retaining or planting vegetation to obscure views of the development from those areas.
- e. In-Stream Towers - A transmission tower may be permitted in a Class I or II stream if it complies with (a) and (b) below.
  - (1) Adjoining towers and conductors cannot safely and economically support the transmission line(s) that span the stream without an in-stream tower.
  - (2) The transmission line cannot be safely and economically placed under the water or streambed.
- f. Utility facility necessary for a public service - The transmission or distribution line meets the standards in subsection 6 below. (Utility Facility Excludes Transmission Towers over 200' in height.)

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 to an existing public road or utility right-of-way or easement and would not increase the width of the clearing for the existing right-of way or easement by more than [50] percent and not beyond a maximum width of [75] feet.
- c. New Routes - If all of part of the proposed pipeline is outside an existing route or not adjacent to an existing route, the permanent right-of-way for the new transmission line route would not exceed [40] feet in width, and:
  - (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 applicant must use a crossing technique or method approved by the Oregon Department of Fish and Wildlife.

f. Utility facility necessary for a public service - The natural gas or petroleum product pipeline meets the standards in subsection 6 below.

6. Utility Facility Necessary for a Public Service

This is already included in the EFU. If we are going to use this for other zones as well it should be included in this chapter.

**215.283 Definition**

Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.

a. A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

b. To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(1) Technical and engineering feasibility;

(2) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(3) Lack of available urban and nonresource lands;

(4) Availability of existing rights of way;

(5) Public health and safety; and

(6) Other requirements of state or federal agencies.

c. Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission

shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

- d. The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
  
- d. The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.
  
- f. The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. [1999 c.816 §3; 2009 c.850 §9]