



# FRIENDS OF THE COLUMBIA GORGE

*SUBMITTED VIA FACSIMILE AND FIRST-CLASS MAIL*

May 27, 2011

Wasco County Planning Commission  
C/o Wasco County Department of Planning and Economic Development  
2705 East Second Street  
The Dalles, Oregon 97058

**Re: Wasco County's proposed Comprehensive Plan Amendments and Energy Ordinance Updates.**

Dear Planning Commissioners:

Friends of the Columbia Gorge (Friends) has reviewed and would like to comment on the proposed Comprehensive Plan and Energy Ordinance updates. Friends is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area. Friends previously submitted comments on May 3, 2011.

Friends supports renewable energy development and supports land use rules that ensure that energy facilities are appropriately sited to protect communities and the environment from adverse impacts of energy development. Friends provides the following comments and recommendation for the proposed revisions to the Comprehensive Plan and Chapter 19 of the Land Use and Development Ordinance.

***Comprehensive Plan, Goal 5 and protection of Scenic and Historic Areas and Natural Resources***

Friends encourages the County to adopt Comprehensive Plan provisions that protect the scenic and open space resources of the Columbia River Gorge, the Deschutes River Canyon, the White River, and the John Day Canyon from adverse impacts from energy development near federal and state designated protective boundaries. The proposed revisions to the Comprehensive Plan identify these areas for protection, but fail to give strong protection against development just outside the boundaries of designated areas.

The scale of modern wind energy development dwarfs the scale of conventional development, such as agricultural buildings, that are normally found within and outside the boundaries of these areas. Due to the scenic, cultural, recreational, natural, and economic importance of designated scenic areas to Wasco County and the State of Oregon, the Comprehensive Plan should recognize the importance of protecting these resources from energy development both inside and outside protective boundaries.

Notably, the “Findings and Inventories” section of the Draft Comprehensive Plan already identifies the need to protect views from the John Day River and Deschutes River regardless of the formal boundaries for the designated Wild and Scenic River areas. *See* Draft Comprehensive Plan at page 8-5: Chapter 8 Sect. B(2)(b)(5). The “Policies and Implementation” section of the Draft Comprehensive Plan also prohibits new mineral and aggregate development within 1/4 mile of the boundaries for the John Day and Deschutes Wild and Scenic Rivers. *See* Draft Comprehensive Plan at page 8-2: Chapter 8 Sect. B(1)(b)(5) (Policy 2).

Since the County has already proposed extending protections beyond the boundaries of Wild and Scenic River areas, Friends recommends revising the “Findings and Inventories” to identify views from the Columbia River as needing protection as well. This language should be inserted into Draft Comprehensive Plan at page 8-5: Chapter 8 Sect. B(2)(a)(2).

Friends also recommends that the County adopt a policy, separate from the “Findings and Inventories,” that discourages land uses or development near designated scenic areas that would be incompatible with the protected area or detract from the visual character of the area. For the Columbia River Gorge National Scenic Area revised language should be inserted into Chapter 8, Goal 5 Sect. (B)(1)(a) (Policy 1). For both the John Day and Deschutes Wild and Scenic River Areas revised language should be inserted into Chapter 8 Sect. B(1)(b) (Policy 2).

**LUDO § 19.030(C)(4) - protection of regionally and nationally significant scenic landscapes.**

Draft LUDO Chapter 19 includes three options for addressing scenic impacts of energy facility development on designated scenic areas. *See* Draft LUDO § 19.030(C)(4). Option 1 would provide no explicit protection for federal and state designated scenic areas. Instead, Option 1 would rely on conditional use review standards that require that new development be “compatible with surrounding land uses” and that new development “will not significantly detract from the visual character of the area.” *See* LUDO § 5.020(B) and (H). Option 2 would create a uniform buffer prohibiting wind energy development around federal and state scenic area boundaries. Option 3 would adopt language similar to Oregon Energy Facility Siting Council (EFSC) regulations that prohibit energy development that would cause adverse scenic impacts to designated areas.

Friends observes that all three options would require some level of protection for the scenic resources of state and federally designated scenic areas. Friends also notes that protecting the John Day and Deschutes River from development outside of the protective boundaries would implement the proposed Comprehensive Plan amendments, which identify the need to protect

all areas visible from the John Day and Deschutes Rivers. Draft Comprehensive Plan at page 8-5: Chapter 8 Sect. B(2)(b)(5).

***Option 1 – No specific protections for scenic resources.***

Option 1 would defer completely to other LUDO provisions for minimizing scenic impacts. These include provisions that require that new development “will not significantly detract from the visual character of the area” and that new development is compatible with surrounding land uses. The conditional use review standards clearly require consideration of impacts to surrounding land uses regardless of whether the adjacent land use is within an area designated for protection. So the conditional use review standards would require some level of protection to designated scenic areas if those areas are part of the affected environment.

Draft Chapter 19 includes editorial comments arguing how Option 1 would be implemented. Draft Chapter 19 at p. 19-26. The comments argue that if a development would be located outside the boundaries of a designated scenic area, then the land use findings would necessarily conclude that there are no scenic impacts to scenic resources. Based on a plain reading of the Conditional Use review requirements, there is no basis for drawing this conclusion. As stated above, the Conditional Use review standards would require at least some substantive consideration of scenic impacts to designated scenic areas.

Given the potentially contentious and ambiguous interpretations of the conditional use review standards, Friends opposes Option 1 and recommends that the County adopt Option 2 or Option 3. Both Option 2 and Option 3 provide clearer standards that are more easily enforced.

***Option 2 – Uniform scenic resource protection buffers.***

Option 2 would establish a uniform buffer around designated scenic areas. This option would be the most efficient standard to implement for the protection of state and federally designated areas. Instead of relying on a case-by-case analysis as would be required for both Option 1 and 3, Option 2 would provide a clear, uniform, and easily implemented standard. However, Option 2 would provide less flexibility for developers.

Friends generally supports Option 2, but recognizes that Option 3 may be more workable for the County and wind energy developers.

***Option 3 – adopting EFSC’s “no adverse effect” standard.***

Option 3 would implement a version of EFSC’s “no adverse effect” standard. This would require case-by-case analysis of scenic impacts and would prohibit development that would likely result in significant adverse impacts to listed areas. Friends generally supports this approach if it were revised to eliminate potential conflicts with the National Scenic Area Act.

Option 3(2) would allow “related or supporting facilities” within all of the listed areas if other possible locations for those facility components would have greater impacts. *See* Draft Chapter 19 at p. 19-26. As written, this would include the Columbia River Gorge National Scenic Area, where industrial development is strictly prohibited.<sup>1</sup> If the County adopts Option 3 it must delete

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<sup>1</sup> The Scenic Area Ordinance defines industrial use to include “any use of land *primarily involved in* production of electric power for commercial purposes.” NSA-LUDO § 1.200 Definitions (emphasis added).

subsection (2) or revise the subsection to eliminate the conflict with the National Scenic Area Act.

Friends recommends adding an addition subsection to Option 3 that would require consultation with agencies with expertise in the listed area as part of the evaluation of whether a proposal is likely to result in significant adverse impacts to values identified as significant or important.

Finally, Option 3 would implement a requirement that is already familiar to the industry and has proven workable throughout the state. Adopting EFSC's standard would ensure all commercial energy development proposals are held to uniform and fair regulations whether they are reviewed by the County or by EFSC.

**Draft LUDO § 19.020(C)(2)(a)(2)(c) - Radar triggered aviation safety lighting.**

Draft LUDO § 19.020(C)(2)(a)(2)(c) would require that any Federal Aviation Administration required safety lighting be, if possible, radar triggered to reduce the impacts of lighting on landowners and the public. Draft Chapter 19 at page 19-18. FAA safety lighting from wind energy facilities can dramatically alter the visual character of landscapes and disrupt the quality of life of rural landowners and the public. As such it is important that permitting agencies and the industry explore ways to reduce the impacts of FAA lighting. The FAA has approved radar triggered lighting at least on an experimental level for a wind facility on the east coast. The proposed language would only require radar lighting "to the extent possible," which ensures that developers would not be required to use radar triggered lighting unless approved by the FAA for the specific project. Friends supports the proposed language.

**Draft LUDO § 19.030(A)(1)(c) - Public Involvement in BOCC decisions related to projects under review by EFSC.**

EFSC has permitting jurisdiction for energy facilities with a generating capacity of over 105 MW and for projects where the proponent elects for EFSC review. EFSC regulations include a process for the local jurisdiction to provide guidance on any local regulations that would apply to the energy development. For proposals in Wasco County the BOCC provides this input to EFSC. There are no currently rules guiding this process. Draft Chapter 19 includes editorial notes requesting guidance on whether the County should adopt specific guidelines for how the BOCC will prepare recommendations to EFSC.

Friends encourages the County to provide the public an opportunity to comment on all BOCC recommendations to EFSC regarding local land use regulations. Since EFSC gives the BOCC's recommendation deference, it is important that the public have an opportunity to comment on matters of significant local concern.

**Draft LUDO § 19.030(B)(3) - Related and supporting facilities in non-resource land zones**

Draft LUDO § 19.030(B)(3) would allow related and supporting facilities in non-resource zones where large-scale commercial power generating facilities are otherwise prohibited. Related and supporting facilities, such as transmission lines, substations, and haul-routes, can cause impacts

to local communities just as significant as the primary energy generating facility. Given the risk of unacceptable impacts to non-resource lands, Friends is concerned that allowing related and supporting facilities in non-resource zones would lead to unnecessary controversy and ill-conceived energy development proposals. As such Friends generally opposes Draft LUDO § 19.030(B)(3). However, if the County retains this section Friends recommends including revisions that provide robust protection to non-resource lands.

The proposed subsection creates five criteria for determining whether it would be “necessary” for related facilities to be located in non-resource zoned lands. This includes a requirement that impacts be consistent with the size, scale, and impact of other existing uses in the non-resource zone. *See* Draft Chapter 19 at page 19-23. This factor seems misplaced, as it appears to protect non-resource zoned land from unacceptable development impacts rather than providing a factor for evaluating “necessity.” To clarify the intent, Friends recommends moving the first factor, (B)(3)(a), to the introductory paragraph for the subsection (B)(3). Friends also recommends that the word “shall” be replaced with the word “may” in the introductory paragraph to clarify that related and supporting facilities are not categorically allowed.

The revised language should read: “Related or supporting facilities to a commercial power generating facility ~~shall~~ may be allowed in non-resource zones upon a showing that such related or supporting facilities are necessary for siting the commercial power generating facility. The related or supporting facilities ~~will~~ shall be consistent in size, scale, and impact as other existing or allowed uses in the non-resource zone. If related and supporting facilities cannot be designed to be consistent with other existing development, the use shall not be allowed.”

#### **Draft LUDO § 19.030(C)(5) – Natural Resource/Wildlife Protection**

Draft LUDO § 19.030(C)(5) would require that wind energy facilities be operated without causing significant adverse impacts to any natural resource identified “by any local, state, or federal wildlife agency.” *See* Draft Chapter 19 at p. 19-27. Draft Chapter 19 includes editorial language requesting guidance on whether the County wants to limit identified resources to those listed in the LUDO and Comprehensive Plan or extend County regulatory protection to resources listed by other agencies. Friends encourages the County to retain the reference to “any local, state, or federal wildlife agency.”

In particular, the U.S. Fish and Wildlife Service (USFWS) has extensive knowledge about wildlife species that would be affected by wind energy development in Wasco County. As such, USFWS is an invaluable resource for evaluating potential impacts to wildlife resources. Moreover, USFWS has jurisdictional authority to protect migratory birds, golden eagles, bald eagles, and any species listed under the Endangered Species Act. Given the central role USFWS plays in protecting these species, it is critical that the agency be involved with the permitting process and that resources identified by the agency are protected.

To clarify the permit review process the County should adopt a new subsection under Draft LUDO § 19.030(C)(5) describing required preconstruction studies and post-construction monitoring. Currently studies, analysis, and post-construction monitoring are included as measures that can be employed to reduce significant impacts to wildlife. *See* Draft Chapter 19 at

p. 19-27. This includes “[p]roviding information pertaining to the energy facilities potential impacts,” “conducting biologically appropriate baseline surveys,” and “developing a plan for post-construction monitoring.” Draft LUDO § 19.030(C)(5)(a), (b), and (m). Pre-construction surveys and reports and post-construction monitoring provide information on how to reduce impacts, but the studies themselves do not prevent or reduce impacts. These requirements should be given their own subsection heading preceding the actual mitigation measures. Mitigation measures should be required to avoid or fully mitigate impacts identified in the required reports. For post-construction impacts, the County should give itself authority to require that facilities shutdown turbines that are identified as problematic based on post-construction fatality reports. Such turbine closures would be limited to times where there is a high probability of harming sensitive species, such as a known migratory window.

Friends recommends that the County adopt additional language requiring consultation with the Oregon Department of Wildlife and USFWS. The County should require that proposed wind energy development facilities implement wildlife protection measures identified by those agencies.

Friends also recommends that the County require the creation of a Technical Advisory Committee that can review post-construction monitoring reports and require after-the-fact mitigation.

#### **Draft LUDO § 19.030(D)(1)(c) – Setbacks**

Draft LUDO § 19.030(D)(1)(c) specifies the required setbacks for wind energy facilities. This includes a setback of 1.5 times the height of a wind turbine from residences in resource zones and a 1-mile setback from all non-resource zoned lands. Draft LUDO § 19.030(D)(1)(c)(3) and (4). Draft Chapter 19 includes editorial notes explaining that the existing noise regulations would actually require the resource zone setback to be roughly 1,600 feet and that the EFSC setback for dwellings is 3,520 feet. Draft Chapter 19 at p. 19-36.

Friends encourages the County to adopt an increased setback for dwellings in resource zones and for all land in non-resource zones. For resource zones the setback should be one mile. At the very least the setback from dwellings should match the EFSC standard of 3,520 feet. For non-resource zoned lands Friends supports a 1.5 mile setback.

Friends notes that the County should also be aware that EFSC has attempted to employ obscure state laws to preempt Wasco County’s setback requirements during EFSC review of the Summit Ridge Wind Project. The Draft Proposed Order (DPO) for the Summit Ridge Project explained that the current Chapter 19 setback is 1,665 feet. DPO at 44; LUDO § 19.030(C)(3)(1). The DPO acknowledges that some turbines would not be able to meet the required setback. Instead of enforcing the property line setback the DPO concluded that the local land use laws can be disregarded pursuant to ORS 469.504(b)(1)(B). ORS 469.504(b)(1)(B) allows EFSC to preempt a local land use laws implementing a Statewide Planning Goal if the proposed development would violate the local rule but comply with purpose of the Statewide Planning Goal. To arrive at its preemption conclusion the DPO appears to have erroneously concluded that the energy ordinance setback somehow implements Statewide Planning Goals rather than local protections

against the impacts of energy development. EFSC has not issued a Final Order on the Summit Ridge Energy Project, so it is unclear if the agency will adopt the DPO's flawed reasoning. Nonetheless, the County must be aware that EFSC may disregard local land use setbacks when permitting facilities under its jurisdiction. To foreclose this risk Friends recommends adopting language expressly stating that all required setbacks are distinct from Statewide Planning Goal requirement and not subject to ORS 469.504(b)(1)(B).

### **Citizen Involvement**

The County must ensure that the energy ordinance update process complied with the Citizen Involvement requirements of Statewide Planning Goal 1, OAR 660-015-0000(1), and local rules implementing this goal. This includes requirements that members of the citizen advisory committees be broadly representative of broad geographic areas and broad interests in land use and land use decisions. The County must ensure that the selection of members in the citizen involvement program was based on "an open, well-publicized public process." OAR 660-015-0000(1).

It is not clear that selection of participants for the Community Advisory Groups for the Energy Ordinance update process was conducted through an open, well-publicized process and that it resulted in an advisory committee that represented broad range of interests. Friends was allowed to attend Citizen Advisory Committee meetings, but was not allowed to participate as a formal Committee member. There is no evidence that any other local or regional environmental interest groups were invited to participate as Committee members. It is not clear whether any federal agencies responsible for managing land or other resources that could be affected by the proposed amendments were invited to participate in the planning process. This includes the Bureau of Land Management as manager of the Lower Deschutes Wild and Scenic River Area, the U.S. Forest Service as the expert agency for National Scenic Area resources, the U.S. Fish and Wildlife Service as an expert agency for migratory birds and threatened and endangered species, and the National Park Service, as the administrator for the Lewis and Clark National Historic Trail and the Oregon Pioneer National Historic Trail. The County should provide further elaboration on how the planning process has complied with Statewide Planning Goal 1.

### **Conclusion**

Friends requests to receive notice of the final hearing of the Board of County Commissioners.

Thank you for the opportunity to comment.

Richard Till  
Conservation Legal Advocate

*Michael Long* (Michael Long for Rick Till)

