

WASCO COUNTY PLANNING COMMISSION

May 3, 2011

**Meeting begins at 3:00p.m.
Columbia Gorge Discovery Center
Classroom, lower level
5000 Discovery Drive
The Dalles, OR 97058**

I. CALL TO ORDER

II. ROLL CALL

COMMISSIONERS PRESENT

Don Hoffman
Vicki Ashley
Ron Archer
Jill Amery
Russ Hargrave
Chip Wood

COMMISSIONERS ABSENT

Mike Omeg

STAFF PRESENT

Gary Nychyk, Interim Planning Director
Brenda Jenkins, Planning Coordinator

OTHER AGENCIES PRESENT

Todd Cornett, Siting Officer, Oregon Department of Energy (Acting as Consultant for Wasco County)

III. PUBLIC COMMENT: Maximum 15 minutes, limited to items not being heard or discussed elsewhere on the agenda.

None

IV. APPROVAL OF PAST MINUTES- February 1, 2011

Vice Chair Ashley moved to approve the minutes as submitted.
Commissioner Amery seconded
Chair Hoffman called for discussion
None.
Chair Hoffman called for the vote

The motion was unanimously approved 5 to 0, 1 abstain, (Commissioner Archer) 1 absent (Commissioner Omeg). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – yes
Commissioner Hargrave – yes
Commissioner Wood – yes
Commissioner Omeg – absent
Commissioner Archer – abstain
Commissioner Amery – yes

**V. LEGISLATIVE HEARING: File # PLALEG-09-06-0003. A request to:
Amend the Comprehensive Plan (Comp Plan).**

1. Amend policy and inventory language related to energy production, consumption and conservation.
2. Include prior acknowledged updates that were never added.

3. Modernize language that is not compliant with state law, incorrect, or out of date.
4. Reformat entire Comp Plan
 - Create Oregon Land Use Goal related chapters
 - Remove Duplication

Amend the Wasco County Land Use and Development Ordinance (WCLUDO)

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 Modernize language that is not compliant with state law, incorrect, or out of date.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.

Chair Hoffman opened the hearing as follows:

Time Limitations

If numerous people in the audience wish to testify, do a show of hands of those who would like to testify either for or against the proposal. If a lot of people want to testify, indicate they will be limited to 5 minutes (or other) and their testimony will be timed. Also indicate that their testimony needs to be limited to applicable criteria.

The Rules of Evidence are as follows:

- a. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.
- b. Evidence received shall be of a quality that reasonable persons rely upon in the conduct of their daily affairs.
- c. Testimony and evidence must be directed toward the subject hearing.
- d. Any party of record may request that the record remain open for at least seven (7) days prior to the conclusion of the initial evidentiary hearing.

Disclosure of Interest of Ex Parte Contact:

- a. Does any Planning Commission member wish to disqualify themselves for any personal or financial interest in this matter?
None.
- b. Does any member of the audience wish to challenge the right of any Planning Commission to hear this matter?
None.
- c. Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of Wasco County in this matter?
None.

Chair Hoffman called for the staff report.

Gary Nychyk, Wasco County Interim Planning Director

Interim Director Nychyk then introduced Todd Cornett, Siting Officer, Oregon Department of Energy (Acting as Consultant for Wasco County), as follows: Thanks to both of the Energy Resource Advisory Groups for the immense amount of hard work, dedication, and fortitude they invested in this process.

This project has been a long time coming and it took more than a year and a half of research, meetings, discussions and more meetings to develop the proposed changes you will hear about today. There is absolutely no way that the Planning Department Staff could have developed this ordinance without the direct input from our ardent and varied advisory group members.

The result of this long standing effort is, in my opinion, the basis for an energy ordinance that will be able to live into the future with the fast paced changes inherent to the renewable energy world. To help present the proposed changes, Wasco County and the Oregon Department of Energy have reached an agreement to allow Todd, Cornett, Siting analyst for the Department of Energy to present the proposed updates. As many of you know, Todd was the past Director for the Wasco County Planning Department and invested a great deal of time into researching, organizing, conducting, compiling and composing the proposed updates, and we are happy to have him present those updates today.

So with that, I am happy to introduce Todd Cornett.

Todd Cornett, Siting Officer, Oregon Department of Energy

Mr. Cornett presented the staff report as follows:

Levels of documentation:

There are a lot of changes and it was recognized it would be hard to go through everything. So, there are three levels of documentation that are available. This will allow those interested in reading as much or as little as they want.

1. Overview and Frequently Asked Questions. This has the least amount of information and is the easiest to read and understand what is being done. 3-4 pages which very briefly explains what is being done. This is intended to be very easy to read and understand. These are printed out and available to everyone in the audience.
2. Attachment A and B of the staff report and back ground documents (Non-Commercial Wind and Solar sheet and Noise overview sheet). These go into much more detail about what changes are occurring and why. These are included in the Packets for the Planning Commission and County Commission.
3. The actual ordinances that are being changed. Other than the energy chapter in the Comp Plan and LUDO these are not being include because of the cost and limited value in printing these out. They are available on the website which is referred to in numerous locations. I have all of these documents available if any

Easy Non-Controversial Amendments

I want to cover these amendments but since I do not believe there will be any concerns I am going to go through them pretty quickly and generally. I do not plan to open these documents up but there are all available to be put on the screen should anyone have any questions. If any Commissioners have questions please stop me along the way.

Comprehensive Plan Changes

-What is the comp plan? It is the visionary document for the county meant to guide us to where we want to be in 20 years. Any changes to the land use and development ordinances are not allowed unless they are consistent with the vision outlined in the Comprehensive Plan.

-What state is it in? Until recently it was only in a paper format and not digital. It was organized in a way that made it very difficult to use it for its intended purpose. Some prior amendments were never included because of the paper format or just stuck at the back. A lot of the information is out of date and some is no longer consistent with state and federal law. It has ceased to function as it was intended a long time ago.

-Overview of reformatting: It has been reformatted into Oregon land use goal related chapters with all of the policies, findings and inventories located in one place. As an example, under the old formatting, updates related to the energy chapter would have required amending at least four different chapters and I was required to search the entire document to make sure I found all of the applicable information. As a result of the reformatting only one chapter is required to be updated and no searching is required. This will facilitate searching and updating of other chapters in the future and start to make the Comprehensive Plan relevant again.

-Overview of Modernization: Much of the findings and inventories were included at the time of adoption (1983). Where possible, staff was made non-substantive updates. In addition to conducting the research to find this information staff utilized outside experts to provide updates. As an example, Jessica Metta with the Mid Columbia Economic Development District who staffs the Wasco County Economic Development Commission provided all of the updates to the Economics Chapter.

LUDO

-Chapter 2 – Development Approval Procedures

-Section 2.050 - Amends what uses require a pre-application conference.

-Section 2.060 – Creates consistency with state law regarding completeness of an application.

-Chapter 4 – Supplemental Provisions

-Section 4.070 - Amended to clarify which energy related uses were exempt from building height requirements.

-Chapter 15 – Administration and Enforcement

This entire Chapter was superseded by the Wasco County Code Compliance Ordinance adopted in 2009. The majority of this Chapter is therefore being removed.

Complex Amendments – I am not sure how long this will take. I am not going to read through the ordinances word for word. I will describe the amendments generally and when I believe there is need for additional clarification or something might be controversial I will explain it in more detail.

Comprehensive Plan

Chapter 16 - Energy Conservation (particularly the tables for wind and solar)

1. Policy 4: Recycling and waste prevention. This language was updated with input by David Skakel, Solid Waste Specialist with the Tri County Hazardous Waste and Recycling Program.
2. Policy 6: Renewable Energy production. This coincides with which zones allow which type of renewable energy production and by what process in the Land Use and Development Ordinance.
3. Findings and Inventories:
 - a. Sources: This is updated language about the potential sources of energy Production in Wasco County based on current information. The two tables listing the advantages and disadvantages of wind and solar energy production were intended to be value neutral. The subsequent language indicates the review process is intended to maximize the advantages and mitigate for any disadvantages.
 - b. Consumption: The existing language is modernized.

LUDO

Chapter 3 Zones (See Attachment B for more detail)

- A. Reformatting:
 1. Other than A-1 zone uses are divided into two categories:
 - a. Uses Permitted Outright
 - b. Uses Permitted Subject to Conditional Use Review
 2. Uses Permitted Outright actually consist of the following 3 subcategories which correspond to different review processes. Each zone is being reformatted to have each of these as a distinct category with different uses allowed in each.
 - a. Uses allowed without any review.
 - b. Uses allowed subject to ministerial review (Type I)
 - c. Uses allowed subject to standards (Type II)
 3. Something new is being proposed in the uses allowed subject to ministerial review category. This is broken into two review processes based on whether or not building codes requires a permit. If they do Planning will conduct a review and issue a decision. If building codes does not require a review Planning will not conduct a review but property owners will still be required to adhere to specific standards. This was proposed for two reasons.
 - a. Close the gap on buildings under 200 square feet. People oftentimes believe that because building codes does not require a review they are exempt from Planning. This is incorrect. They must still be accessory to a legal use and are required to meet all property development standards.
 - b. Allow for very small scale non-commercial solar and wind facilities to be established without the need to come to Planning as many are now but ensure there are some standards to prevent incompatibility with adjacent uses. This will be discussed further in Chapter 19.
- B. New Uses
 1. Non Resource Zones (Residential, Commercial, Industrial & F-F(10))
 - a. Utility Facilities. There is currently inconsistency in these zones about how, where and by what process water, sewer, electrical and communication facilities are allowed. The proposal breaks these into minor that are allowed without review and major utility facilities that are allowed subject to conditional review. (Show definitions to explain each)
 - b. Minor Home Occupation: This is meant to acknowledge what is already being done. (Show standards). If it does not meet this standard it is a conditional use.
 - c. Non-commercial stand alone and small scale commercial power generating facilities (explain small scale commercial in Chapter 19). This is located in all review process categories except Uses Allowed without review. It is really just a

place holder that directs someone to Chapter 19 to determine what use is allowed by what process.

2. Resource Zones (Agricultural and Forest):
 - a. Utility Related uses are consistent with ORS
 - b. Non-Commercial stand alone and small scale commercial power generating facilities. Place holder only.
 - c. Commercial power generating facilities. Only allowed as a conditional use subject to Chapter 19 and other state standards applicable to Agricultural and Forest Zones.
 - (1) A-1 zone already includes compatibility review for wind turbines in Section J(17)
 - (2) Forest zone requires Goal Exception for energy facilities taking more than 10 acres out of commercial forest production.
 - d. Electrical Transmission Facilities & Natural Gas or Petroleum Product Pipelines subject to Chapter 19 - Standards for Energy Facilities Section 19.030. Only allowed as a conditional use. These are different than a Utility Facility Necessary for Public Service. (see definitions and review uses to clarify)

Chapter 19 – Standards for Energy Facilities

- A. Non-Commercial Wind and Solar Handout: This is meant to give you an idea of average residential energy and the size and cost of wind and solar facilities to meet those needs. This should help put into context the size and scale of facilities that are likely to be placed. This was helpful when drafting the review standards, processes and thresholds.
- B. Definition of Commercial vs. Non-Commercial & Small scale commercial vs. Large scale commercial.
 1. The division between commercial and non-commercial is whether or not someone produces more energy than they consume and that is sold to a utility. We did this for several reasons:
 - a. to create a bright line test between commercial and non-commercial.
 - b. This division will not become obsolete in a few years. Some jurisdictions have established a specific MW threshold that is the dividing line between commercial and non-commercial. As efficiencies increase and non-commercial exceed that threshold it will have to be changes.
 - c. We are more worried about the impact the structure that produces energy than we are about whether it is commercial or non-commercial. The standards have been designed more around compatibility with the setting and impacts to adjacent property owners.
 2. Large Scale Commercial vs Small Scale Commercial: The consequence of creating the division between commercial and non-commercial that we did is a residence with a small but efficient system could produce more than they consume. Rather than requiring them to go through a full Commercial Scale review the small scale commercial category was created. This allows for someone to be technically commercial under our definition but they are directed to the processes and size thresholds included in the non-commercial section which means even though they are technically commercial they will be limited to creating no more impact than a non-commercial facility.
- C. Purpose
- D. Definitions are being added and stricken so the underline and strikethrough describe what is being added and what is being removed. Chapter 19 is being completely replaced so this is all new and does not reflect any underline or strikethrough. All of the definitions will be in Chapter 1 at the conclusions. The following are definitions that have created more interest not already discussed.
 - Height of Tower:
 - Related or Supporting Facilities to a Commercial Power Generating Facility: These are allowed as part of a commercial power facility and do not require a separate application.
 - Shadow Flicker
- E. Non Commercial (Remember – Small Scale Commercial also are limited to these thresholds and standards): The intent of how this was designed was to make it easy as possible for the majority of non-commercial projects to be sited

1. Review Processes & Uses (Correspond with matrixes and zones)
 - a. Wind and Solar Matrices (Correspond with zones) No upper limit in the non-resource zones for solar because the size will be self regulating based on power needs and the cost. Based on cost and scale and limited impact we believe the vast majority of wind turbines and solar arrays will require only minimal review.
 - b. Hydro – Flood plain vs. non flood plain
 - c. Other – we don't know what we don't know so we will have to make a determination when an application comes in based on the detail.
2. Review Standards
 - a. Ministerial – Remember, if building codes doesn't require a permit we will not require a review but they are required to meet these standards for compatibility. We anticipate all of the installers will quickly learn these standards so we shouldn't be setting up to inadvertently violate them. The two other alternatives are to not create any standards for uses under a certain threshold or make everyone go through a permitting process.
 - (1) General Standards (Go through these quickly. Other than noise the rest should be non-controversial)
 - Noise (go to the noise background sheet)
 - (2) Specific Standards: (Go through these quickly. None should be controversial)
 - Tower
 - Solar
 - b. STS/Type II Standards. These are in addition to ministerial standards. (Go through these quickly. None should be controversial)
 - c. Conditional Use: Chapter 5 standards in addition to STS and Ministerial Standards.

F. Commercial -Intent is to create a clear process.

1. Review Processes –
 - a. Planning Commission – This is the default review authority for the majority of commercial projects.
 - b. Planning Department – There are certain types of uses that are proposed to be reviewed by Planning Department.
 - c. EFSC – Staff recommends the language as proposed. We are not obligated by statute to make this process public. It should be left to the discretion of the BOCC
 - d. Water Resources
 - e. FERC
2. County Decision Options
 - a. Tentative approval encourages commercial facilities because it allows them to shop for investors prior to expending a lot of money on some of the studies. Any final approval is still required to be done in a public hearing with notice and the opportunity to appeal so it doesn't cut anyone out of the process
3. Non-Resource Zone Standards – This section is meant to clarify what is allowed and more importantly what is not allowed in non-resource zones.
4. General Standards -

- a. Noise: As previously discussed we are relying on state standards. Also see setbacks under Wind Energy Facility standards.
 - b. Visual Impact
 - c. Natural Resource/Wildlife Protection
5. Specific Standards
- a. Wind Energy Facilities
 - (1) Visual Impact
 - (2) Setbacks
 - b. Solar Energy Facilities
6. Electrical Transmission Facilities

Additional Information:

The Planning Commission will meet and discuss this issue again on May 3rd at 3:00 PM. Is there any information that staff has not provided that would be useful?

Final editorial revisions (BOCC Hearing)

If approved a final editorial revision will be required. This will not change the substance of what is approved by the Wasco County Court. It will be limited to editorial changes including but not limited section numbers, references to section numbers and headers and footers.

Chair Hoffman called for questions from the Commission.
None.

Chair Hoffman called for public testimony.

Chair Hoffman also announced that the hearing will be continued to June, he then stated the Commission will be taking Public Testimony tonight and reserving questions from the Commission for next month. Vice Chair Ashley asked if the testimony next month would be new testimony only. Stating that if you testify tonight you will not be allowed to testify next month. Chair Hoffman stated that it would only be open for new testimony.

Audience member asked for clarification on the ability to testify at both hearings. Chair Hoffman stated that if they testified tonight they would only be allowed to testify next month with new information. He further explained they would not be allowing repetitive testimony at the June Hearing.

David Nykirk, property owner

Mr. Nykirk stated that he felt the area in Mosier bordered by Hood River County, the National Scenic Area, and the National Forest should be exempt from wind farm development. He stated that they have been told a wind farm will never be allowed there; therefore that area should be exempt from the ordinance. He also stated that the wind farms do not run for free. His electric rates are going up because the power is sold to the wind farms to generate power which is then sold to another state. He stated it wasn't fair to ask the residents to pay for wind farms use just so they can sell their power to other states.

Peter Cornelius, Friends of the Columbia River Gorge

Mr. Cornelius summarized the comments submitted by the Friends of the Columbia River Gorge.

Elaine Albrich, Stole Rives, LLP

Ms. Albrich summarized the comments she submitted to the Commission. Ms. Albrich primarily addressed Section 19.030 of the Wasco County LUDO.

Chair Hoffman asked Ms. Albrich for a comment on the proposal to exempt a portion of the county from the wind energy ordinance. Ms. Albrich stated that ORS 215 allows commercial energy facilities, but that it was something that Wasco County would have to look at through their zoning process.

Brian Wallace, Iberola Renewables

Mr. Wallace stated that he wanted clarification on the definition of "down wind property owner" stating that other ordinances define it as "prevailing wind direction". He also stated that FAA radar triggered

lighting is not approved by the FAA, therefore installing them would not be in compliance with the FAA rules. He asks that this requirement be stricken from the ordinance. Mr. Wallace also stated that the setback from nonresource zones of 1 mile is in excess of State regulations and he asks that we consider reducing the setback.

Gary Casady, Property Owner

Mr. Casady that he was part of the Commercial Advisory Group, he also stated that the purpose of the proposal today should be to allow citizens the opportunity to comment. He requests that we allow an option for appeal of the decisions based on the proposed ordinance. He further that in order to protect health and safety and the protection of individuals there should be a 1 mile buffer to all dwellings. He suggested allowing for exceptions as requested.

Chair Hoffman called for additional testimony.
None.

The Commission directed Todd Cornett to create a document comparing and addressing the comments made by Ms. Albrich.

The Commission directed Staff to create maps for the next hearing to show buffers that were discussed.

Vice Chair Ashley moved to continue the hearing to a date and time certain. Said date and time being June 7, 2011 at 3:00pm.

Commissioner Hargrave Seconded.

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was unanimously approved 6 to 0, 1 absent (Commissioner Omeg). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – yes
Commissioner Hargrave – yes
Commissioner Wood – yes
Commissioner Omeg – absent
Commissioner Archer – yes
Commissioner Amery – yes

VI. FUTURE AGENDA ITEMS:
June 7 – Energy Updates

VII. ELECTION OF OFFICERS
Vice Chair Ashley proposed to keep the offices the same.

VIII. ADJOURNMENT
Adjourned at 6:00 pm

Respectfully submitted,

Donald Hoffman, Chair
Wasco County Planning Commission

Todd Cornett, Planning Director
Wasco County Planning & Development