

**ANTELOPE RIDGE WIND FARM EFSC APPLICATION
UNION COUNTY REVIEW COMMENTS**

BACKGROUND INFORMATION

Horizon Wind Energy, hereafter the Applicant, has submitted a request to the Oregon Energy Facility Siting Council (EFSC) for a Site Certificate on the proposed Antelope Ridge Wind Farm, entirely in Union County, Oregon. Application review is subject to EFSC jurisdiction because the proposed electrical generation capacity is greater than 105 MW-- proposed to be from 273 MW up to 546 MW.

Oregon Department of Energy (ODOE) is the administrative agency for the EFSC. Union County and ODOE have entered into an Intergovernmental Agreement to cooperatively review the site certificate application focusing on land use, transportation and other socio-economic issues.

The Applicant has the opportunity to elect whether the Council's land use standards are reviewed and approved by the County [ORS 469.504(1)(a)], or by obtaining an EFSC land use determination [ORS 469.504(1)(b)], or some combination of both agencies. The Applicant has elected to seek an EFSC compliance determination with ORS 469.504(1)(b)(A) -

- (A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

Union County's Land Use Plan and land use regulations were acknowledged to be in compliance with the Statewide Planning Goals on June 20, 1985. However, a number of local and statewide land use regulation changes have occurred since this acknowledgement date. Union County has not kept its land use regulations current with new and amended goals, rules and statutes since acknowledgement. ORS 197.646(3) requires Union County to directly implement these new or amended goals, rules and statutes for land use

decisions where the County has not kept their local land use regulations current with these statewide land use changes. Therefore, Union County collectively applies local land use regulations and, where applicable, implements new and amended statewide land use goals, rules and statutes. The following Union County Review Comments will identify where local or statewide land use regulations apply to the Antelope Ridge Wind Farm Application, hereafter Application.

Generally, the Applicant has accurately identified the applicable local and statewide land use regulations and where the Application accurately identifies the applicable land use regulations these Review Comments will generally be silent. However, the County believes the Application can be refined by addressing the following Review Comments. These comments will follow the Application outline in Exhibit K and proceed section by section. Editorial errors will be identified to assist the Applicant and add clarity to the Application.

EXHIBIT K LAND USE

K.1 Introduction and Land Use Review Path (Page k-1)

Union County agrees the Application must address "applicable substantive criteria from the Union County (County) acknowledged comprehensive plan and land use ordinances, with applicable LCDC administrative rules and goals, and with any land use statutes directly applicable to the facility".

However, the County does not agree that an exception to Goal 3 (Agricultural Lands) is necessary. The LCDC adopted administrative rule amendments [OAR 660-033-0130(37)] in January 2009 that removed the requirement for a Goal 3 exception where commercial wind farm projects exceeded a 12 or 20 acre threshold.

These Review Comments will more fully explain the justification for the County's position on this issue in comments on Section K.9 Goal 3 Exception.

K.2 Energy Facility and Related or Supporting Facilities (Page k-2)

Edit- The first item listed as a Facility component states-

- Up to 182 wind turbines of 1.5 to 3.0 MW and with hab heights ranging from 330 feet to 475 feet tall;

The first sentence on the next page (K-3) states these are "turbine tip heights". The applicant should clear up this discrepancy.

Meteorological Stations (Page k-3)

Meteorological towers are identified to range from 210 feet up to approximately 312 feet tall. ORS 215.283(2)(m) & OAR 660-033-130(16) identify "transmission towers over 200 feet in height" as a nonfarm use subject to local government approval in an Exclusive Farm Use Zone. In Union County, EFU statutory sub (2) uses are reviewed through a Conditional Use review process (UCZPSO Article 21.00) which requires notice, a public hearing and demonstration that the OAR 660-033-130(16) criteria can be satisfied.

The Applicant does not appear to have addressed the administrative rule [OAR 660-033-130(16)] review criteria related to these meteorological towers.

In addition, the Applicant has not indicated the FAA requirement to light all towers over 200 feet will occur on the meteorological towers.

Additional Construction Areas (Page k-6)

The Application has identified up to two 10-acre lay down areas within the Site Boundary to include among other things a temporary on-site rock crusher and a temporary (concrete) batch plant. Some on-site rock material removal is anticipated during road construction activities that will be processed through the proposed temporary rock crusher. However, Valarie Franklin, Horizon Wind Energy Project Manager, clarified in a telephone call on December 2, 2009, that the majority of rock material for road and tower construction will come from an off-site source and no new rock pit will be established within the Site Boundary.

The two sites proposed for lay down areas are identified in a UCZPSO A-4 Timber-Grazing Zone which is a mixed farm-forest zone. Union County determines whether to allow the uses identified in the farmland Administrative Rules or the forestland Administrative Rules based on a predominant soils analysis based on a parcel specific predominant soils analysis. The UCZPSO Section 1.08 defines "Predominant Use" as follows:

PREDOMINANT USE: The term used to describe the most common use of a parcel when differentiating between farmland and forest land. In determining predominant use NRCS Soil Conservation Service soil maps will be used to determine soil designations and capabilities. The results of this process will be the most important method in determining the predominant use of the parcel. Other factors which may contribute to determining predominant use include parcel characteristics such as a commercial stand of timber, and the current use of the property. Removing a commercial stand of timber from a property will not result in a conversion of predominant use unless the property is disqualified as forest land by the Oregon Department of Forestry.

Union County Planning Department has performed a NRCS Soil Conservation Service soils analysis on the properties proposed for the two 10 acre lay down areas. All parcels are predominantly comprised of rangeland soils. Therefore, Union County would apply the farmland Administrative Rules (OAR 660-033-120 & 130) as the applicable authorized uses.

Temporary aggregate crushing and temporary (concrete) batching are listed uses in OAR 660-033-120, Table 1 that require review by a governing body or its designate under ORS 215.296 and are required to meet the following criteria(5)-

- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Union County processes such uses as Conditional Uses per UCZPSO Article 21.00 through a County Planning Commission public hearing process.

K.3 Land Use Analysis Area and Map (Page k-6)

Edit- County believes the Applicant has sited the wrong attachment and Attachment K-1 should be changed to Attachment K-2.

K.4 Council Determination on Land Use (Page k-8)

The County commends the Applicant in their explanation (Footnote 3) of the County's complicated joint implementation of local land use regulations and implementation of State Administrative Rules and Statutes. As indicated in the County's comments to **K-2 Energy Facility and Related or Supporting Facilities- Additional Construction Areas** above, the County's A-4 Timber-Grazing Zone is a mixed farm-forest zone and the County determines whether farm or forest rules apply by first doing a parcel specific soils analysis. If a parcel is predominantly comprised of farmland soils (which include cropland and rangeland soils) then the County applies the farmland uses and review requirements in OAR 660-033-120 & 130.

The County's parcel specific NRCS soils analysis (on record at the County- 29 pages) has determined all but one parcel within the Site Boundary are predominantly comprised of agricultural soils (cropland & rangeland). Therefore, the controlling land use regulations on these agricultural parcels would be OAR 660-033-120 (Table 1)-

Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.

The corresponding review requirements are identified in OAR 660-033-130(5) and (37).

The one predominantly forestland parcel is on the east face of Glass Hill and includes part of the 230 kV transmission feeder line route north to the City of La Grande. This parcel is a mixture of rangeland- 154.88 acres (over which the 230 kV transmission feeder line is proposed) and forestland (210.6 acres), and is owned by the Rocky Mt. Elk Foundation. Therefore, the County would apply the forestland Administrative Rules [OAR 660-006-0025(4)(j)] to review the proposed use on this parcel:

- (j) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 004.

Since the proposed 230 kV transmission feeder line is not proposed to be on land used for a "commercial forest operation" and since the feeder line is proposed to be overhead, the only land being taken out of rangeland

production will be the actual footprint for the power poles which is not expected to exceed 10 acres; therefore an exception to Goal 4 is not necessary.

OAR 660-006-0025(4) requires its listed uses to be reviewed against the following section's criteria:

- (5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands;
 - (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
 - (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
 - (c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4) (e), (m), (s), (t) and (w) of this rule.

Footnote 6 on Page k-8 discusses whether the proposed 230 kV transmission feeder line is a part of the Project [ORS 215.283(2)(g)] or is treated as a separate outright use and evaluated under ORS 215.283(1)(d). The County believes the plain language of ORS 215.283(1)(d) specifically excludes "commercial facilities for the purpose of generating electrical power for public use by sale". The proposed wind energy Project cannot be "for public use by sale" without the transmission feeder line. Therefore, the County believes the Applicant has accurately identified the transmission feeder line as a use identified in ORS 215.283(2)(g) and OAR 660-033-120 & 130- commercial utility facility for the purpose of generating power for public use by sale.

Page K-9 zzz., zv. & v. LCDC Rules & Goals, & Land Use Statutes

As discussed above, Union County's Land Use Plan and land use regulations were acknowledged to be in compliance with statewide land use requirements in 1985, but have not been kept current. Therefore, the County jointly applies County land use regulations and statewide land use regulations per ORS 197.646(3). Here the controlling statewide land use regulations are the LCDC farmland and forestland Administrative Rules because all parcels within the Site Boundary are predominantly farmland parcels.

On predominantly farmland parcels because OAR 660-033-013(37) became effective in January 2009, after the County's adopted UCZPSO Article 52.00 (October 15, 2003) and because the rule replaced the acreage threshold for a Goal Exception with specific review criteria, the County does not believe a Goal 3 Exception to Goal 3 Agriculture Lands is necessary.

K.5 Applicable Substantive Criteria from the UCZPSO UCZPSO 5.04 Predominantly Forestland Conditional Use & Footnote 8 (Page k-11)

As stated above under comments to **K.4**, the County has performed a NRCS predominant soils analysis and found one parcel within the Site Boundary to be predominantly comprised of forestland soils. The County's UCZPSO Section 5.04 review criteria are the same as the review criteria in OAR 660-006-0025 (5) and should only be applied to the review of the proposed transmission feeder line

No Significant Adverse Impacts to Accepted Farm Practices (Page k-13)

The Applicant has deferred submitting several management plans- Revegetation Plan, Habitat Mitigation and Monitoring Plan, Erosion Control Plan, Weed Management Plan and Fire Prevention Plan.

Union County would allow the Applicant to defer the completion of these management plans as long as they demonstrate how they will be completed. However, deferring these management plans would result in a County tentative land use decision that includes approval conditions requiring the completion of the management plans before final approval could be granted.

The Applicant identifies that "... approximately 75 acres are high value or non-high value farmland soils". (3rd paragraph, Page k-13). The County believes the Applicant is identifying high value and non-high value cropland soils. "Farmland" soils include both cropland and rangeland. Except on the very north and south extremes of the Site Boundary, all cropland soil areas are in rangeland use.¹ The northerly Site Boundary that includes cropland use is included as a possible route for the overhead 230 kV transmission feeder line. The southerly Site Boundary that includes cropland use is the existing Jimmy Creek County Road.

Edit- "... the County Extension [delete- of the Natural Resource and Conservation] Service..."

K.5.2 Compliance with ORS 215.283(1) (d) (Page k-14)

The County does not believe this statute applies to the Facility's 230 kV transmission feeder line(s). This statute states- "... not including commercial facilities for the purpose of generating electric power..." and the County includes "all related facilities" in its review of commercial wind power generation (UCZPSO Section 52.02).

K.5.3 UCZPSO 20.09 Significant Goal 5 Resource Areas (Page k-17)

The Applicant has done a good job addressing the County's inventoried Goal 5 resources. The only point of clarification is that the County makes no regulatory distinction between Big Game Winter Range and Critical Wildlife Habitat. UCZPSO Section 20.09 requires the same review and management plan requirements for both.

The County disagrees with the Applicant that preparation of a WR and CH big game management plan is not required as a part of the EFSC process. OAR 345-021-0010(1)(k)(C)(zz) requires the Applicant to "Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations ...".

Union County uses a cooperative wildlife management plan as the way to meet Goal 5 protection requirements; here a 3C site requires mitigating in favor of the Goal 5

¹ The Site Boundary includes NRCS listed cropland soils such as 50C & 50D Ramo Silty Clay Loam, 46B Palouse silt loam and 7 Catherine Silt loam that are used only for rangeland practices.

resource- big game winter range and critical wildlife habitat.

K.5.5 UCZPSO Section 21.07 Specific Standards Governing Conditional Uses (Pages k-21 & 22)

The Applicant recognizes the temporary (concrete) batch plant and (temporary) rock crushing operations would be subject to these review requirements, however the responses do not describe these operations. Information about on-site and off-site rock resource quantities necessary for the operation of these facilities, duration, hours of operation, traffic routes, and whether there are any anticipated conflicts with adjacent or nearby land uses should be identified and reviewed against the UCZPSO Section 21.07 review requirements.

K.5.6 Specific Criteria for Commercial Wind Power Generation Facilities UCZPSO 52.04 Application (Page k-25)

Union County does not believe UCZPSO Section 52.04 (1)(J) is applicable because LCDC adopted Administrative Rule amendments removing the acreage threshold for a Goal 3 exception. The County is required [ORS 197.646(3)] to implement new rules [OAR 660-033-013(37)] when they become effective (January 2009).

UCZPSO 5.08 Development and Fire Siting Standards for A-4 Zone (Page k-30)

The Applicant is requesting from EFSC a Variance from the County's road pitch requirements- UCZPSO Sec. 5.08(6)(g)- 8% slope with short pitches of 12%. The County requires the appropriate rural fire protection district to agree to a Variance from these standards to assure that the district can provide adequate fire protection.

UCZPSO 20.08 Riparian Zone Setbacks (Page k-31)

The County regulates land use activities adjacent to Class I streams, rivers and lakes. Jimmy Creek and Clover Creek are inventoried on the County's Land Use Plan Map as Class I streams. This section (20.08) limits vegetation removal and road and structural construction within riparian zones. The Application identifies general practices to minimize impacts to riparian corridors. The Application should specifically identify features proposed

for Jimmy and Clover Creeks and explain how the setback and vegetative cover requirements will be met.

**K.6 Compliance with Applicable UCCP Goals & Policies (k-36)
Resources (Goal 5)
Plan Policy 3.**

The Applicant should also identify how the proposed Project will or will not impact existing irrigated agriculture or expansion thereof.

**Economy (Goal IX) (Page k-41)
Plan Policy 4.**

The County agrees the Plan Policy includes an error and "discouraged" should be "encouraged".

Plan Policy 5.

Similarly, this Plan Policy includes an error and "encouraged" should be discouraged".

**K.8 Directly Applicable Statutes, Goals and LCDC Rules
(Page k-46)**

Even though Union County has an acknowledged land use plan and implementing land use regulations, substantial changes have occurred to statewide land use regulations since the County's acknowledgement that have not been incorporated into the County's land use regulations. Therefore, ORS 197.646(3) requires the County to directly implement those new or amended goals, rules and statutes.

Because the Site Boundary is in a County A-4 Timber Grazing Zone which is a mixed farm-forest zone, Union County has performed a predominant soils analysis and found affected parcels to be predominantly comprised of farmland and forestland soils. Therefore, the farmland and forestland goals, rules and statutes apply where the County has not incorporated new or amended statewide regulations since acknowledgement.

The County has identified in earlier comments the directly applicable statutes and rules that the Applicant should additionally address to supplement the Application. They are summarized as follows:

- ORS 215.283(2) (m) & OAR 660-033-130(16)- Meteorological towers are proposed to be from 210 feet up to approximately 312 feet tall.
- ORS 215.283(2) (b) & OAR 660-033-120 (Table 1) & -130 Aggregate crushing and temporary (concrete) batching are nonfarm uses requiring review and approval subject to meeting OAR 660-033-130(5) criteria.
- ORS 215.283(2) & OAR 660-033-130(37)
The Applicant correctly identifies these statutes and rules as applicable to this Application. However, the Applicant's analysis should identify the location of the affected high value farmland soils (0.36 acres) and the proposed use(s) that may occur on these soils. The Application needs a more detailed explanation on how Facility components on these soils are necessary. The Application also needs to distinguish between existing cropland and rangeland non-high value soil areas and analyze how the proposed Facility components satisfy subsection (b)- cropland and (c)- rangeland criteria. The Application provides a good general explanation of how many of the criteria are satisfied, however site specific components should be evaluated against the applicable criteria.
- OAR 660-006-0025(4) & (5)- One parcel is predominantly comprised of forestland soils. This parcel is proposed to include part of a proposed 230 kV transmission feeder line which should be reviewed against the subsection (5) criteria.

K.9 GOAL 3 Exception

The County does not agree a Goal 3 Exception Analysis is required. LCDC OAR 660-033-013(37) became effective on January 2, 2009 and replaced the previous requirement for a Goal 3 Exception when a commercial wind power generation facility exceeded 12 acres or 20 acres. The UCZPSO Article 52.00 was adopted (October 15, 2003) prior to this rule amendment and has not been updated. Therefore, ORS 197.646(3) requires the County to directly implement the new rule requirements.

CONCLUSION

The County believes the Applicant has done an excellent job addressing a complicated mix of local and statewide land use regulations. However, the County believes the Application can be improved by addressing the above Review Comments.

