

Chapter 750
WIND POWER GENERATION FACILITIES

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750.01 Purpose. The purpose of this chapter is to clarify rules governing the siting and development of *wind power generation facilities*.

A. As used in this chapter “High-value farmland” means:

1. High-value farmland as described in ORS 215.710 is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710(2), (4) and (6) are December 6, 2007.
2. Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:
 - a. Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;
 - b. Within the boundaries of a district, as defined in ORS 540.505; or
 - c. Within the boundaries of a diking district formed under ORS chapter 551.
3. Land that contains not less than five acres planted in wine grapes.
4. Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within the portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

750.02 Applicability. This ordinance applies to *wind power generation facilities* installed and/or constructed after the effective date of the ordinance. *Wind power generation facilities* constructed prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance. Any upgrades, modifications, or changes that materially alter the size or placement of an existing *wind power generation facilities* shall comply with the provisions of this ordinance.

- A. *Residential Wind Power Generation Facilities* may be located in any zone. In residential zones listed under Chapter 510, only one *wind turbine generator* per residence (excluding temporary dwellings) is allowed.
- B. *Small-Scale and Commercial Wind Power Generation Facilities* may be located on property zoned EFU, TG, or I.

- C. No portion of a *Commercial* or *Small-Scale Wind Power Generation Facility* shall be within 2 miles of:
1. Properties designated on the Comprehensive Land Use Plan Map as residential [those zoned Rural Residential (RR-5) or Recreation Residential (RR-2) only], or
 2. The city limits of an incorporated city, unless a resolution specifically supporting placement of a *wind power generation facility* within 2 miles of the city limits has been passed by the city council of that city.
- D. Furthermore, no portion of a *wind turbine generator* that is part of a *Commercial Wind Power Generation Facility* shall be located within 2 miles of an existing dwelling unless an Affidavit of Consent has been signed by all property owners with an existing dwelling within 2 miles of the *wind turbine generator*. This Affidavit of Consent shall be recorded with the deed records in the Baker County Clerk's Office.
- E. All *wind turbine generators*, excepting *Residential Wind Power Generation Facilities*, shall have a setback of 1.5 times the *total height* of the *wind turbine generator* from all public roads and utility lines not exclusive to the *wind power generation facility*.
- F. When the potential exists for adjacent landowners to develop their commercial wind resource, the setback from the property line shall be a minimum of ½ mile in the direction of the prevailing wind, unless a variance is obtained. This shall be to control the effect of *wind shadow* on the adjacent landowner's right to develop.

750.03 Uses

A. Types of Procedures

1. *Residential Wind Power Generation Facilities* may be permitted when authorized in accordance with the Type I procedure provisions of Chapter 115.05.
2. *Small-Scale Wind Power Generation Facilities* may be permitted when authorized in accordance with the Type II procedure provisions of Chapter 115.06, except when sited upon high-value farmland, in which case the *Small-Scale Wind Power Generation Facility* shall be authorized in accordance with the Type III procedure provisions of Chapter 115.07.
3. *Commercial Wind Power Generation Facilities* may be permitted when authorized through a Conditional Use Permit in accordance with the Type III procedure provisions of Chapter 115.07.

B. Permit Expiration Dates and Extensions. *Wind Power Generation Facilities* shall be subject to permit periods and extension requirements set forth in Chapter 220.

750.04 Application Requirements

- A. The following information shall be provided by the applicant as part of an application for a *Wind Power Generation Facility* requiring review as a Type I procedure:
1. Site Plans conforming to the requirements of Section 310.04(A).

- B. The following information shall be provided by the applicant, prior to construction, as part of an application for a *Wind Power Generation Facility* requiring review as a Type II procedure:
1. A written narrative for the proposed *wind power generation facility*, including but not limited to:
 - a. Anticipated timeline for permitting, construction and operation;
 - b. Site preparation, vegetation removal and treatment;
 - c. A description of the facility and proposed generation capacity;
 - d. Anticipated noise, light, dust and other impacts on surrounding properties during construction and after development;
 - e. Demonstration of compliance with the provisions of Section 750.05;
 - f. Demonstration of compliance with the provisions of Chapters 620 and 640 of this Ordinance;
 - g. Consultation with the Oregon Department of Fish & Wildlife (ODF&W) regarding possible wildlife impacts from the installation and construction of the proposed facility.
 2. Site Plans conforming to the requirements of Section 310.04(A), also including:
 - a. The location, height, footprint and dimensions of all existing and proposed structures, facilities, components and fencing;
 - b. Number and size of proposed *wind turbine generators*;
 - c. *Wind turbine generator* configuration and layout, including electrical facilities, transmission facilities, substations, distribution, communications and ancillary facilities;
 - d. Adjacent roads;
 - e. Areas of existing and proposed vegetation to be added, retained, replaced or removed;
 - f. Setbacks of all existing and proposed structures from property lines and a vicinity map showing adjacent properties, land uses, zoning, existing buildings and roadways within 2 miles of the proposed facility;
 - g. The location of any bodies of water, waterways and wetlands on the site;
 - h. The location and distance to public or private airports or airstrips, within 2 miles of the proposed project;
 - i. Location of all proposed overhead and underground transmission lines and recorded easements;
 - j. An accurate vicinity map of existing or approved *wind power generation facilities* within one half mile of the proposed facility under consideration.
 3. Identification of potential conflicts, if any, with:
 - a. Wetlands and Floodplains;
 - b. Other resource operations and practices on adjacent lands including *wind power generation facilities* on such adjacent lands; and
 - c. Accepted farm or forest practices on surrounding resource land, including the nature and the extent of the impact of the proposed facility on the cost of such practices.
 - d. Cultural, historic or prehistoric artifacts or sites, if inventoried in the Baker County Comprehensive Plan, and their preservation.
 4. Covenant Not to Sue. A Covenant Not to Sue with regard to generally accepted farming practices shall be recorded with the County. Generally accepted farming practices shall be consistent with the definition of Farming Practices under ORS 30.930. The applicant shall covenant not to sue owners, operators, contractors, employees, or invitees of property zoned for farm use for generally accepted farming practices.

5. Demonstration of compliance with the provisions of Section 750.05(B)(5).
 6. Preliminary Construction, Dismantling and Reclamation Plan. A preliminary construction, dismantling and reclamation plan in accordance with Section 770.02.
 7. Financial Assurances. An explanation of how financial assurances will be provided for dismantling and reclamation, in accordance with Section 770.04.
 8. Other Federal, State and local agency permits, as required, including:
 - a. Identification of required permits
 - b. A statement regarding the status of all required permits at time of application
- C. In addition, the following information shall be provided by the applicant, prior to construction, as part of an application for a *wind power generation facility* requiring review as a Type III procedure:
1. Demonstration of compliance with all criteria that apply to the proposal, including the requirements listed in Section 750.04(B)
 2. A written narrative for the proposed *wind power generation facility*, including but not limited to:
 - a. Site preparation, surveying, and staking
 - b. Water usage, including amounts and sources (during construction and operations)
 - c. Site security and fencing proposed (during construction and operations)
 - d. Waste and hazardous materials management, as well as spill prevention and containment for construction and operation of facility
 - e. Aviation lighting system that demonstrates compliance with Section 750.05(8)
 3. A detailed site plan for the proposed *wind power generation facility*, including but not limited to:
 - a. Substations and transmission lines
 - b. Ancillary facilities, including administrative and/or maintenance facilities
 - c. Temporary construction workspace, yards, staging and storage areas
 - d. All other components of the *wind power generation facility*
 4. Transportation Plan. A plan that describes the impacts from the proposed facility on the local and regional road system during and after construction. The plan shall be created after consultation with Baker County Roadmaster and the Oregon Department of Transportation, when applicable. The plan will designate the size, number, location and nature of vehicle access points. The plan shall also include the location, grades and dimensions of all temporary and permanent on-site roads, as well as a maintenance plan detailing maintenance needs.
 5. Re-vegetation and Erosion Control Plan. An erosion control plan shall be provided. The plan shall be developed in consultation with a qualified professional. It shall include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation with an appropriate mix of native vegetation or vegetation suited to the area. This requirement will be satisfied if the applicant has a National Pollution Discharge Elimination System (NPDES) permit.
 6. Weed Control Plan. A weed control plan shall be provided, addressing the prevention and control of all Baker County identified noxious weeds directly resulting from the *solar power generation facility* during preparation, construction, operation and demolition/rehabilitation, subject to the

Baker County Weed Department's recommendation. The plan shall also address monitoring during and post-construction. Reimbursement to agencies for their review time shall be the responsibility of the developer.

7. Noise. A description of anticipated noise from the proposed project, as well as mitigation efforts, shall be required.
8. Lighting. A description of anticipated light from the proposed project, as well as mitigation efforts, shall be required.
9. Fire Protection & Emergency Response Plan. A fire prevention and emergency response plan shall be provided for all phases of the life of the facility. The plan shall address the major concerns associated with the site, including but not necessarily limited to the terrain, dry conditions, limited access, available water, and address the fire siting standards for the applicable zone.
 - a. The plan shall verify the fire district and/or contact fire department responsible for providing emergency services. High rise rescue is the responsibility of the *wind power generation facility* owner/operator with local emergency responders, if applicable, providing ground level assistance.
 - b. Spill Prevention Control and Counter Measure Plan (SPCC) shall be provided. The plan shall include verification that a local emergency service provider has equipment, training and personnel to respond to spills.
 - c. Operations and Maintenance Plan detailing expected work force, local response capability (contract or otherwise), controlled access, and in the case of transmission line, proof of emergency response capability in accordance with OPUC rules governing operation and maintenance of such lines.
 - d. An Emergency Response Plan for responding to natural and/or man-made emergencies or disasters.
10. Socioeconomic Impact Assessment. In order to maximize potential benefits and to mitigate outcomes that are viewed as problematic, decision makers need information about the socioeconomic impacts which are likely to occur upon development. A socioeconomic impact assessment of the facility shall be submitted, evaluating the effect of the proposed project upon such factors as, but not limited to, the social, economic, public services, cultural, tourism, and recreational aspects of affected communities and/or individuals. These effects can be viewed as either positive or negative and shall be compared to outright permitted uses of the zone in which the proposed facility would be located.
11. Analysis of impacts of the *wind power generation facility* on:
 - a. Criminal Activity (vandalism, theft, trespass, etc.) and proposed actions, if any to avoid, minimize or mitigate negative impacts.
 - b. A *visual simulation* of the completed project. The overall goal of a *visual simulation* is minimizing visual resource impacts resulting from human activities. The inventory process considers scenic quality of the landscape, viewer sensitivity, and distance from viewer to the landscape. *Visual simulation* is taken from *key observation points* or vantage points selected to

provide a representative geographic distribution of areas likely within the view shed of renewable energy development.

750.05 Review Standards

- A. The following requirements and restrictions shall apply to all new or replacement *wind power generation facilities requiring review as a Type I procedure*:
1. *Residential Wind Power Generation Facilities* shall meet the setback requirements of Chapter 340.02, prior to issuance of a Zoning Clearance.
 2. Where feasible, electrical cables and transmission lines shall be placed underground.
 3. The applicant shall be responsible for meeting the requirements of other necessary permits.
- B. The following requirements and restrictions shall apply to all new or replacement *wind power generation facilities* requiring review as a Type II or Type III procedure:
1. All setback requirements in Chapter 340, as well as the standards in Section 750.02, must be met prior to commencement of any construction. These setbacks must be depicted in the Site Plan Map submitted with the application. Setbacks shall not apply to power and utility lines, access roads developed to support the facility, and any other development that is reasonably expected to be on or near a property line, unless expressly required by the Planning Commission.
 2. Based on the existing conditions and vegetation at the proposed site, the *wind power generation facility* shall be constructed or surfaced with materials to reduce visibility of the facility through the use of non-reflective materials that minimize glare and blend the structure into the surrounding environment.
 3. Any and all associated equipment located on the structure shall be surfaced in a non-reflective material color to match the structure on which it is located. Nothing in this paragraph preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.
 4. Where feasible, electrical cables and transmission lines shall be placed underground.
 5. The *wind turbine generators* shall be designed to minimize noise or other detrimental effects.
 6. Wildlife Plan. The Baker County Planning Department shall notify ODFW of the opportunity to consult with applicants on *wind power generation facility* projects.
 - a. For *Small-Scale Wind Power Generation Facilities*, a written statement shall be provided from a wildlife professional, addressing known wildlife concerns in the area in relation to the proposed *wind power generation facility*. This statement shall include a map of the property and facility location, a description of the proposed development, and detailed wildlife concerns in relation to the proposed facility. No monitoring plan is required.
 - b. For *Commercial Wind Power Generation Facilities*, a wildlife plan shall be administered by a wildlife professional of the applicant's choosing, in consultation with ODFW. The County has

the option to have the wildlife plan peer reviewed by a wildlife professional of the county's choice, at the applicant's expense. The Oregon Columbia Plateau Eco-Region Wind Energy Siting and Permitting Guidelines or similar guidelines are recommended standards for wildlife studies. For commercial projects being sited by the Energy Facility Siting Council (EFSC), compliance with EFSC's avian and wildlife monitoring requirements will be deemed to meet this requirement. The wildlife plan must include:

- i. Avian
 - ii. Bat
 - iii. Big game species
 - iv. All other wildlife species of reasonable concern
 - v. Impacts to wildlife habitat
 - vi. Habitat mitigation proposed
 - vii. Monitoring plan and proposed mitigation, if necessary
7. Noise. The amount of noise produced by the proposed development must have a minimal adverse impact on abutting properties and the surrounding area compared to the impact of developments which are permitted outright.
8. Lighting. Any proposed lighting must consist of light-emitting diodes (LEDs) and shall be shielded so as to direct light towards the ground in order to minimize adverse impact on abutting properties and the surrounding area compared to the impact of developments which are permitted outright.
9. Weed Plan. A Weed Plan shall be developed in consultation with the Baker County Weed Department in order to minimize adverse impact on abutting properties and the surrounding area compared to the impact of developments which are permitted outright.
10. The *wind turbine generator* shall be designed and constructed to discourage bird nesting and wildlife attraction.
11. Reasonable efforts shall be taken to protect and to preserve existing trees, vegetation, water resources, or other significant natural resources.
12. In the Exclusive Farm Use zone, *Wind power generation facilities* sited on *high-value farmland* soils must satisfy the following:
- a. Reasonable alternatives have been considered to show that siting the *wind power generation facility* or component thereof on *high-value farmland* soils is necessary for the facility or component to function properly or if a road system or *wind turbine generator* string must be placed on such soils to achieve a reasonably direct route considering the following factors:
 - i. Technical and engineering feasibility;
 - ii. Availability of existing rights of way; and
 - iii. The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under subsection (b);
 - b. The long-term environmental, economic, social and energy consequences resulting from the *wind power generation facility* or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically

result from the same proposal being located on other agricultural lands that do not include *high-value farmland* soils;

- c. Costs associated with any of the factors listed in subsection (a) may be considered, but costs alone may not be the only consideration in determining that siting any component of a *wind power generation facility* on *high-value farmland* soils is necessary;
- d. The owner of a *wind power generation facility* 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 facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and

13. In the Exclusive Farm Use zone, for *arable lands*, meaning lands that are cultivated or suitable for cultivation, including *high-value farmland* soils described at ORS 195.300(10), the governing body or its designate must find that:

- a. The proposed *wind power generation facility* will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;
- b. The presence of a proposed *wind power generation facility* will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;
- c. Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil de-compaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and
- d. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

14. In the Exclusive Farm Use zone, for *non-arable lands*, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of Section 750.05(B)(13)(d) are satisfied.

15. In the Exclusive Farm Use zone, in the event that a *wind power generation facility* is proposed on a combination of *arable* and *non-arable lands* as described in Sections 750.05(B)(13) and Section 750.05(B)(14), the approval criteria of Section 750.05(B)(13) shall apply to the entire project.
 16. A *wind power generation facility* shall be designed, constructed and operated in such a way as to exclude members of the public from close proximity to the *wind turbine generator* blades and unprotected electrical equipment.
 17. A *wind power generation facility* shall be designed, constructed and operated to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.
 18. Goal Exception. A *wind power generation facility* shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660-006-0025 (4)(j).
 19. The Preliminary Construction, Dismantling and Reclamation Plan meets the standards set forth in Section 770.02. A Final Dismantling and Reclamation Plan that meets the standards set forth in Section 770.03 will be required prior to beginning construction, as a condition of approval.
 20. Financial assurances, in accordance with Section 770.04, will be provided prior to beginning construction as a condition of approval.
- C. In addition, the following requirements shall apply to all *wind power generation facilities* located in the Timber-Grazing Zone requiring review as a Type III procedure:
1. A *wind 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-660-004.
- D. In addition, the following requirements and restrictions shall apply to all new or replacement *wind power generation facilities* requiring review as a Type III procedure:
1. Demonstration of compliance with all requirements listed in Section 750.05(B)
 2. No lighting of *wind turbine generators* is allowed under normal operating conditions, except as required by the Federal Aviation Administration, Oregon Department of Aviation, or as a condition of approval by the Planning Commission. If lighting is required, the most technologically advanced devices, such as radar-activated lighting systems, obstruction lighting systems or obstacle collision avoidance systems, shall be used to eliminate night lighting under normal operating conditions. If lighting is required, the light shall be shielded or deflected from the ground and other properties, to the extent practicable.
 3. Prior to commencement of any construction, all other necessary permits shall be obtained (e.g., building permit, rural address, road access and any other permits from the Building Official, Baker County Road Department and/or from the Oregon Department of Transportation, among others).

750.06 Adjustments

- A. The *wind power generation facility* requirements shall be facility specific, but can be adjusted as long as the facility does not exceed the boundaries of the Baker County conditional use permit where the original facility was constructed. Adjustments to the original conditional use permit must conform to the standards in Chapter 210.03(B).
- B. An adjustment to the conditional use permit shall be required if proposed facility changes would:
 - 1. Increase the land area taken out of agricultural production by an additional 20 acres;
 - 2. Increase the land area taken out of agricultural production sufficiently to trigger taking a Goal 3 exception;
 - 3. Require an expansion of the established facility boundaries;
 - 4. Increase the number of *wind turbine generators*;
 - 5. Increase generation output by more than 10 percent relative to the capacity authorized by the initial permit due to the re-powering or upgrading of power generation capacity.
 - 6. Changes to project private roads or access points to be established at or inside the project boundaries.
- C. In order to facilitate appropriate timely response by emergency service providers, notifications by the facility owner/operator to the Baker County Planning Department of changes not requiring an adjustment such as a change in the project owner/operator of record, a change in the emergency plan or change in the maintenance contact are required to be reported immediately. An adjustment to a Site Certificate issued by EFSC will be governed by the rules for adjustment established by EFSC.

750.07 Abandonment

- A. The Baker County Planning Director, in consultation with the Oregon Department of Energy and Industry experts, may deem a property abandoned if no power has been generated for a period of two (2) years, or according to industry standards. A notice of abandonment of a *wind power generation facility* shall be sent in the form of a certified, return-receipt letter from the County, or hand delivered by the Baker County Sheriff's office. Such a letter shall identify the property upon which the abandoned *wind power generation facility* is located and shall include an explanation of the action necessary to gain compliance with the Ordinance. This letter shall be delivered to the last known owner of record of the subject parcel according to the tax account information of the Baker County Assessor, as well as to the original applicant for the *wind power generation facility*.
- B. Upon determination of abandonment, the facility owner shall have one year to:
 - 1. Reuse the facility or transfer the facility to another owner who will reuse it within 1 year of the determination of abandonment; or
 - 2. Remove the facility.
- C. If the facility is not reused or restored within one year of the determination of abandonment, County authorization for the use shall expire. Once authorization for the use has expired, the facility shall be removed from the property as per the requirements of Chapter 750.07 within 1 year. If the facility is

not removed within 1 year, the County may remove the facility at the expense of the property owner. The county retains the right to file a lien for the value of the removal of the facility, plus interest, at the property owner's expense. The determination of abandonment is not a land use decision and cannot be appealed to LUBA. However, the Planning Director's decision can be appealed by the project owner or landowner, as described in Section 115.06(G) and Section 115.07(G) of this Ordinance.

750.08 Signs

- A. Outdoor displays, signs, or billboards within the energy facility project boundary shall not be erected, except:
1. Signs required for public or employee safety or otherwise required by law; (e.g., OSHA or compliance with the Manual of Uniform Traffic Control Devices (MUTCD) administered through the County Road Department); and
 2. All signs must receive approval based on the standards included in Chapter 730 in the Baker County Zoning Ordinance.