

Minutes *Approved 9/26/08*
Energy Facility Siting Council Meeting
Oregon Department of Energy
Hood River, Oregon
May 30, 2008

Energy Facility Siting Council:

Bob Shiprack, Chair
Martha Dibblee, Vice Chair
Lori Brogoitti
Michael Haglund
Jake Polvi
Bryan Wolfe

Oregon Department of Energy:

Tom Stoops, Council Secretary
Adam Bless, Project Officer
John White, Project Officer
Michael Grainey, ODOE Director
Ken Niles, Assistant Director NUCSAFE/Siting
Jill Hendrickson

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General

Others:

David Filippi, Stoel Rives
Judge Gary Thompson, Sherman County
Judge Terry Tallman, Morrow County
David Neikirk
LouAnn Wolfe
Pat Pilz
Steve, Northwest Geotech Drilling
Rodney, Northwest Geotech Drilling
Bob Hall
Todd Thomas, Northwest Natural
Edmund Clark, Iberdrola Renewable
Jill Barker
Charles Barker
Leslie Nelson
Carla McLane, Morrow County Planning Director (via phone)
David Rankin, GeoEngineers

Chair Bob Shiprack called the meeting to order at 8:32 a.m.

I. Consent Calendar:

A. Announcements and Introductions

Roll call was taken by Jill Hendrickson:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

II. Action Items:

A. Approval of April 18, 2008 Minutes

Martha Dibblee moved to approve the April 18, 2008 minutes of the EFSC; Jacob Polvi seconded the motion and Council was polled:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

B. Liquefied Natural Gas

Michael Graine, Director of Oregon Department of Energy (ODOE), talked about reports issued recently by ODOE on Liquefied Natural Gas (LNG) Facilities. LNG facilities and pipelines associated with them are energy facilities that EFSC would normally have jurisdiction over. EFSC did have jurisdiction until the Energy Policy Act of 2005 passed by Congress that preempted the state's jurisdiction. The only authority that the states have now under that Act, is the federal permitting authority that the states have for the clean air and clean water act.

Mr. Graine said there are three proposals under active review by the Federal Energy Regulatory Commission (FERC) which is the agency given jurisdiction by Congress. The Governor of Oregon has insisted that all state standards be applied for any LNG facilities sited in Oregon. ODOE is coordinating reviews by the different state agencies on current LNG proposals being reviewed by FERC. FERC has issued a draft environmental impact statement under National Environmental Policy Act (NEPA) for the Bradwood facility, which is about 40 miles from the mouth of the Columbia River. State agencies felt the environmental review at that point was not adequate in a number of significant areas.

Mr. Grainey said there have been proposals for at least four major pipelines from the Rocky Mountains, to deliver natural gas to the same markets that the proposed LNG facilities would be serving. The LNG facilities would bring in liquefied natural gas mostly from foreign markets, and some from Alaska. These lines would be in direct competition with each other. The National Environmental Policy Act does require the federal agency to determine a **need** for the facility before granting approval, but does require a comparison of alternatives. The State does not feel as if the comparison is adequate. Because of the new pipelines that have been proposed, FERC was called upon by Governor Kulongoski, to do a programmatic environmental impact statement of all the alternatives at the same time rather than one after another through each individual one.

The Governor also requested that FERC do a comprehensive review of the need for the facilities and also life-cycle costs of an LNG facility when compared to natural gas produced in North America, in terms of environmental impacts and CO² impacts. The Governor further requested that ODOE do a state review and asked that FERC include this information in their evaluation. FERC denied the request to do the programmatic impact statement, but did agree to take into account any information provided by ODOE.

Mr. Grainey reviewed the report with Council members. He also discussed upcoming meetings with the various developers of the LNG facilities and the gas pipelines.

Lori Brogoitti, EFSC member, asked who would have jurisdiction over the pipelines associated with the LNG facilities. Mr. Grainey stated FERC would have jurisdiction.

There was general discussion about pipelines.

Chair Bob Shiprack asked about the large reserves of natural gas in Alaska and why they are not used more. Mr. Grainey said Alaska does have a small amount of LNG, also. It would be about 10 years before a pipeline would be operational to distribute any of the gas.

There was discussion about the difference in CO₂ emissions between LNG and natural gas, which Mr. Grainey said there is 10% to 30%, natural gas being lower. The same study showed that coal was higher than LNG.

C. Mist Storage Amendment #10

Adam Bless, Project Officer for ODOE, reviewed the history of the Mist amendments. The Proposed Order was issued a month ago and no comments were received regarding Mist. The Final Order provided to the Council was identical to the Proposed Order sent to all council members previously. ODOE asked for approval for a new and consolidated site certificate also, which had been previously supplied to the council members.

Chair Bob Shiprack asked for further clarification on the site certificate. Mr. Bless stated there was not anything new on the site certificate; it only consolidated all previous changes made to the site certificate in previous years.

Todd Thomas, Project Manager for Northwest Natural, stated Northwest Natural has been serving Oregon for a long time. He pointed out details on maps, and said the main footprint of the compressor station takes about 12 acres of land in Columbia County. There are a number of gas storage wells over 12 to 15 square miles. The Mist Facility can supply about 11% of the total volume their customers use of an annual basis. On a peak winter day when demand is high, Mist can supply about 40% of the customer base.

Mr. Thomas reviewed what underground gas storage is. It is a sandstone reservoir at Mist between 1500 to 2500 feet deep. The reservoir had natural gas naturally occurring in it originally. Northwest Natural has converted this reservoir from a production reservoir to a storage reservoir. The sandstone is porous and the gas is stored between sand grains. The main difference between the storage and the original production is the size of the wells and equipment. There are about 25 wells used for storage for approximately 16 billion cubic feet of gas that is available for “working gas.” The gas flows to Mist using compression. To withdraw the gas, it free flows through uncompressed conditions until later in the season when compressors are used.

Chair Bob Shiprack asked if there were any further comments. There were none.

Lori Brogoitti made a motion to approve Mist Storage Amendment #10; Michael Haglund seconded the motion, Council was polled and approved unanimously:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

D. Confirmation of Sub-jurisdiction Facility Criteria

Tom Stoops, Council Secretary, referred to the last meeting regarding the discussion about the 15 questions currently being used to determine whether single owner facilities with geographic relations are sub-jurisdiction facilities. A follow-up memo was given to all EFSC members. A meeting has been scheduled tentatively for June 3rd to discuss the issue with the Columbia Basin counties and review the questions.

John White, ODOE, said this discussion mixes together many items. One he discussed is the cumulative impact, in particular to wind turbines. There has been concern about cumulative impacts in particular on avian species. He stated the 15 questions will not directly address that issue; jurisdictional review will cover this, sub-jurisdictional will not.

Mr. White further stated if the Council feels that geographically related sub-104 megawatt projects by the same corporate parent should be combined and treated as one energy facility and require a site certificate, rulemaking may be necessary to define that.

Another alternative is to continue as the Council has done, if there is a separation shown. Whatever is decided the projects at hand need to have answers. There was discussion about the rulemaking process among Staff and Council members.

Jan Prewitt, Oregon Department of Justice, clarified that the Staff is not asking for a decision on Star Point, but a ratification of the process the Staff has gone through so far so they may continue to work with the developers. At the same time, Mr. White has proposed a need for more specific policy direction.

Michael Haglund, EFSC member, stated he thought there was a mixed feeling from the last meeting regarding the 15 questions. He felt the question is “should the 15 questions be rigorously applied?” He also stated the Council should err on the side of being cautious.

Bryan Wolfe, EFSC member, said he felt the Council should proceed the way it is set down and also work together with the County. In the end, EFSC should take the responsibility to protect the state. Chair Bob Shiprack agreed.

Martha Dibblee, EFSC member, said the builder is eager to pursue the project and feels Staff has done the analysis and determined there is a common owner and boundary and therefore is a jurisdictional facility. In the future if some of other details need worked out that should be done, but Star Point should not be held up while this process takes place.

Lori Brogoitti, EFSC member, asked about the projects currently being reviewed. Chair Shiprack said it was mentioned they be grandfathered in as they are being done.

Ms. Prewitt clarified there are two points of view – 1) allow the Staff to continue to make the decisions based on the 15 questions and 2) the other view is that the Council should specifically make the decision on the facility that is before the Council at this point.

Mr. Stoops reviewed the process and discussed this with Council members.

David Filippi, Stoel Rives, on behalf of Iberdrola, discussed Iberdrola’s views on the Council’s jurisdiction on Star Point. He stated this is the third meeting in the last six weeks and appreciates the attention to this issue. He also said there is nothing in the rules that would require Iberdrola to come forward and answer the question. This has been based on the advice of legal counsel that it would be good to get an understanding upfront as to whether the Council and the State has the jurisdiction of the Star Point project, or whether, as they believe, the County has jurisdiction.

Mr. Filippi reviewed some of the process Iberdrola has gone through, two and a half months ago answering the 15 questions showing the project is separate. Star Point does touch one corner of Klondike III and part of viewing these as separate is that they can be stand-alone projects and they have separate financing with each project. If the Council determines it is not separate, they need to know which project is connected. The financing is different and to tack on financing to another project may preclude the project from going forward.

Ms. Brogoitti asked if the project has different customers. Mr. Filippi said it is unknown at this time because there will be separate power purchase agreements that will go with each project.

Edmund Clark, Project Manager for Star Point, stated the output of the existing projects has been sold. Mr. Clark discussed the separation from Star Point from a fiduciary standpoint also. In regards to the border that is touching at the corner, it is kiddy corner so there would be no utilization of land possible to share, not even for a line to go from one property to the next.

Mr. Haglund asked about surrounding property eventually being operated as sub-jurisdictional. Mr. Filippi discussed other projects going in and the possibility of them having completely separate parent companies. There is no way to require those two projects to be under one site certificate.

Jake Polvi, EFSC member, asked about the close proximity and whether they would be sharing transmission lines. Mr. Filippi said there is a common ring bus located between the various projects transformers. There is a sharing of a portion of the kV line into the grid.

Mr. Haglund asked what an "indirect wholly owned subsidiary" means. Mr. Filippi discussed the entities that are involved between the parent company and the LLC. There was also discussion about the option of Star Point being an amendment to another project, but at some point they would need to be separated due to the ownership.

Mr. Stoops discussed the details of the project and that the policy direction needed from the Council just happened to come up at this time. Ms. Prewitt also said that because of the way the 15 questions are posed they necessarily require the exercise of judgment, which Staff has been exercising on Council's behalf. The Staff would like to continue with this, but needs input from the Council.

Lori Brogoitti asked for clarification on the motion.

Michael Haglund made the motion to determine Star Point is a sub-jurisdictional facility, subject to the commitment they have made to work with Sherman County, ODOE and EFSC to develop an MOU among all parties for the purposes of dealing with the EFSC

standards that are set out in Mr. Linehan’s letter; Martha Dibblee seconded the motion, Council was polled and unanimously approved:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

Ms. Brogoitti asked about a timeline on in the future regarding common owners and sub-jurisdictional projects. Mr. Stoops stated they will discuss that further after meeting with the counties.

E. Request for Sub-Contractor

Tom Stoops talked about the direction received by the Department to put out a Request for Proposal and set up a contracting basis for assistance in reviewing applications. He presented to the Council an initial “Record of Council Action” outlining specific review tasks, and stated with that the Helix Wind Farm a contractor will be hired.

Jan Prewitt said this is based on ORS 469.360 which is the Council’s authority to obtain an independent study by an independent contractor, state agency or local government or any other person of any aspect of the proposed facility within its statutory authority to review. She reviewed procedures and stated that specific issues need to be assigned to the contractor.

Ms. Prewitt said what is needed is a general discussion by the Staff as to what issues are likely to arise. EFSC will authorize Tom Stoops to submit a task order to the contractor, more specific than the “Record of Council Action,” but the order would be under one of the issues listed on the Record. This would give authority to have an independent study done without continually coming back to the Council for additional authority.

Mr. Stoops said the Helix Wind Facility has requested an Expedited Review. Jessie Gronner has said the application would be submitted in late June or July. Mr. Stoops said by the council taking action at this meeting with the Record of Council Action the contractor could start the review when it comes in.

Bryan Wolfe made a motion to accept the Specific Review Tasks to EFSC Support Contractor for the Helix Wind Facility; Martha Dibblee seconded the motion, Council was polled and unanimously approved:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

F. Climate Trust

Tom Stoops said the Energy Facility Siting Council always has a chair on the Climate Trust in the execution of Climate Trust duties. Lori Brogoitti is requesting relief of her participation, and a replacement is necessary. Jacob Polvi asked about the position. Ms. Dibblee said there are four meetings a year, the first week of each quarter. Ms. Brogoitti said there is a national Climate Trust and also an Oregon Climate Trust; the open position is for the Oregon Climate Trust.

Jan Prewitt asked if the position's responsibility includes reviewing proposals for qualified organizations' projects that are funded with the monetary path funds; which Ms. Dibblee confirmed it does. Ms. Prewitt explained the Climate Trust to new Council members. Ms. Dibblee stated the qualified organization means a non-profit organization.

Bryan Wolfe made a motion to elect Jacob Polvi to join the Climate Trust in place of Lori Brogoitti; Martha Dibblee seconded the motion, Council was polled and unanimously approved:

Martha Dibblee	Yes	Jake Polvi	Yes
Lori Brogoitti	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

III. Information Items:

A. Shepherds Flat First Reading

John White began discussion about the Shepherds Flat Proposed Order, introducing Patricia Pilz and Carol Wyskoff representing Caithness Energy, the applicant. Mr. White referred to the documentation which included written public comments received by ODOE Staff, follow-up responses by ODOE, and a comment response document which summarizes the comments and recommendation.

Mr. White said the Draft Proposed Order Comments, which is labeled Draft Proposed Order, Attachment D, will become Attachment E of the Draft Proposed Order. The Public Comment period was extended beyond the public meeting so there could be comments in regards to information at the meeting. The Hearing Officer set the deadline for comments and responses for May 28, 2008.

Comments received from EFSC will lead to the Proposed Order. There is one minor change to one condition that indirectly is in response to public comment. When the Proposed Order is issued, there is also a notice of contested case proceeding that is required by statute. The notice goes to people that commented in the public hearing, and they have twenty days to request party status. Mr. White discussed the next procedures to take place, including a contested case. There is a minimum of approximately forty

days after the issuance of the Proposed Order which puts it into the latter part of July for a Council meeting decision.

There was discussion about timing and public comments. Chair Shiprack asked if there were any public comments for something besides Shepherds Flat Wind Farm

David Neikirk, a resident of Mosier in Wasco County. Mr. Neikirk stated he felt residents that live on the border of these projects should be given legal weight to use in these proceedings and decisions.

Jill Barker, resident of Mosier, asked about the 'wind saturation' and the need to have 'backup' at a certain point. New conventional power plants will need to be built after this point is reach. Ms. Barker asked if there would be more, newer information updated.

Chair Shiprack talked about a presentation that will be brought to the Council meeting, Tom Eckman from Northwest Power Planning Council. His presentation will address some of these issues. Ms. Barker continued to ask questions to consider.

Mr. White began the first reading on Shepherds Flat. The complete application consists of the Amended Preliminary Application submitted in February 2007 and the Application Supplement submitted in November 2007.

Mr. White showed a map of the project. The facility would be located partly in Gilliam County and partly in Morrow County. The project area lies between Highway 19 and Highway 74 on privately owned land. The site is approximately five miles southeast of Arlington. The power output of the facility would enter the Federal Columbia River Transmission System through Bonneville Power Administration's Slatt Substation.

If approved, the proposed Shepherds Flat Wind Farm would be a wind energy facility consisting of not more than 303 wind turbines. The facility would have a combined peak generating capacity of up to 909 megawatts. The applicant has not selected the turbine types for the project, but the turbine-tower hub height would not exceed 105 meters (345 feet) and overall height (maximum blade tip height) would not exceed 150 meters (492 feet). In addition to the wind turbines, the facility would include not more than 70 miles of new access roads on private property, two field workshops, two substations, six meteorological towers and not more than 21 miles of aboveground 230-kilovolt (kV) transmission line. Up to 158 miles of 34.5-kV collector lines would transport the power from each turbine to the collector substations. Most of the 34.5-kV system would be underground, but aboveground segments could be installed on single-pole, cross-arm structures or under strung on the 230-kV transmission-line support structures.

Mr. White began reviewing the Draft Proposed Order, starting with the Standards About the Applicant.

Organizational Expertise: Mr. White referred to page 10 which explains who Caithness Energy is and the fact that they have other projects, including wind power, and have experience in this type of facility.

Retirement and Financial Assurance: Mr. White explained that a bond or letter of credit needs to be in place so there is enough money to restore the site in the event the project shuts down and the certificate holder fails to clean up the site on its own. When you don't know how many turbines, roads, etc. are involved, at this stage the calculation is not precise. Typically, a worst-case layout is predicted and produces an estimate, which is outlined on pages 14 and 15, which resulted in a total of \$19.346 million as the estimated cost for this proposal. The actual bond or letter of credit is expected to be smaller than this figure. It will be arrived at by the certificate holder giving the final design layout before construction begins. There is also an inflation rate figured in the cost.

There was discussion among council members about using an outside consulting firm to arrive at the cost. Mr. White said a firm familiar with demolition costs broke down restoration project into individual task costs.

Land Use: Mr. White said there is extensive information on land use, from page 16 through page 57. The land use decision is the decision a county would make with a sub-jurisdictional project. This is the overall requirement in statute that the proposed facility comply with the statewide planning goals. Oregon land use is administered through local comprehensive plans designed to comply with statewide goals. The counties then establish ordinances to carry out the policy in their comprehensive plan. EFSC interfaces with the counties on a jurisdictional project by asking the county what land use ordinances they would apply to this type of project; EFSC applies the same ones.

Shepherds Flat was more of a challenge because of two counties involved. Part of the process is to determine what conditions a county would apply if they were issuing a conditional use permit. This is critical because once the site certificate is issued, the county is bound to issue a conditional use permit and not add any new conditions. Mr. White referred to page 28 and 29, Table 4, which shows a Gilliam County comparison of the Pebble Springs CUP Conditions with Shepherds Flat. There is a Morrow County table on page 48 comparing Shepherds Ridge CUP Conditions with Shepherds Flat.

Mr. White explained some background information on Shepherds Ridge in Morrow County, which was sub-jurisdictional. The project was never built and the area is now somewhat encompassed in Shepherds Flat.

Mr. White said in looking at the land use Staff could not recommend a finding to EFSC that the project as proposed complied with every applicable criterion, specifically the Gilliam County Zoning Ordinance 4.020(D) (14) and Morrow County Zoning Ordinance 3.010(D) (16), both of which involve the same issue. These ordinances talk about a limit on the acreage that can be used for a power-generation project on Exclusive Farm Use

(EFU) zoned land. In this project, and typical of wind projects, the acreage of the footprint of the turbines is not the issue. The Department of Justice spent hours on this issue and the advise is that the roads must be included as part of that calculation. On page 21, Table 3 shows the components considered part of the principal use and the access roads. The towers themselves are well under the 20-acre limit but the access roads are over. This table does not include the substations but they are relatively minor acreage for the project.

The 20-acre limit exceeds the county ordinance and the project exceeds them; therefore ODOE cannot include the land use standard as being met. When that occurs, the next step for the Council laid out in statute, the Council must determine whether the facility complies with the applicable statewide planning goal directly. In this case it is Goal 3, the Agricultural Planning Goal.

The discussion of Goal 3 begins on page 50 of the proposed order. The statewide regulations show the same acreage limitation in OAR 660-033-0130(22). The only way to allow the project is to take exception that is provided for in statute and the Council must determine whether a goal exception is justified under ORS 469.504(2), discussed on page 54-55. The basis that ODOE Staff is recommending the Council to use to find the exception is justified is called a reasons exception and the criteria is on page 55. Mr. White read for the record that the Council has to find “The following standards are met: (A) Reasons justify why the state policy embodied in the applicable goal should not apply; (B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and (C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.”

ODOE Staff has given the support for recommended findings on the criteria and conclude the Council should approve a Goal 3 Exception under its statutory authority to do so.

Mr. White brought up the subject of setbacks. The land use analysis for Gilliam County, discusses setbacks on pages 22 through 24. Several Council members in the past have expressed concern about setbacks for safety reasons. Mr. White read from the Proposed Order “Until more definitive turbine-failure data become available, the Department recommends that the Council adopt safety setbacks based on the Council’s own precedents, on ordinances from other jurisdictions that have addressed the issue and on the available turbine failure data discussed above. For public roads, the Department recommends that the Council adopt a safety setback of 110-percent of maximum blade tip height, measured from the centerline of the turbine tower to the nearest edge of the public road right-of-way, assuming a minimum right-of-way width of 60 feet. For residences, the Department recommends that the Council adopt a safety setback of one-quarter mile (1,320 feet or 402 meters) The distance would be measured from the centerline of the turbine tower to the center of the house and would apply to residences existing at the time of facility construction. In addition, the Department recommends that the Council adopt a

setback requirement of 110-percent of maximum blade tip height from the centerline of the turbine to the nearest boundary of the certificate holder's lease area. These safety setback distances would apply unless a greater setback distance is required under the County ordinances discussed below or is necessary for compliance with noise control regulations (discussed at page 131)." He further stated that the safety can be expanded by counties in their ordinances. In the case of Gilliam County, they have adopted a greater setback for residences. He also talked about the noise standards sometimes make it that it has to be more than one-quarter mile away.

The question was asked how far Gilliam County requires for the setback. Mr. White said about 3,025 feet, which it does state at the bottom of page 23. Gilliam County's ordinance is to the property line, not the residence itself. This ordinance was addresses in the Leaning Juniper II project and interpreted when it says a portion of the facility, it would be the turbine, not the project boundary.

Mr. White said another setback issue that came up is a "wind resource" setback. The issue is if you have two wind turbines, one in front of the other, the impact will affect the amount of energy available for the second turbine. It has been determined in the past this would best be addressed through easement acquired by the project developer.

In the case of Shepherds Flat there are sub-jurisdictional wind energy projects on both sides. The best resource winds are generally from the southwest, turbines located within an upwind project may intercept the wind before it reaches turbines in a downwind project. Rather than posing restrictions on turbine placement on upwind projects the Department recommends that each project require sufficient property upwind of its proposed turbine locations by lease or easement to provide an appropriate buffer and to prevent a loss of wind energy. The Draft Proposed Order contains no proposed condition establishing wind resource setbacks.

The question was asked what the distance is between the turbines. Mr. White said approximately one mile. There was discussion about a fixed distance being a problem because the size of turbines makes a difference. The appropriate distance for wind utilization cannot be figured without knowing the size.

Protected Area: Mr. White referred to pages 59 through 64 of the Proposed Order. Table 6 identifies the protected areas within twenty miles of the site boundary. In regards to the definition of a protected area, that is specifically lined out in Council rules. No part of the facility would be located in a protected area and for the reasons discussed in this section ODOE recommends the Council find the proposed facility would have no significant adverse impact on any protected area.

Ms. Brogoitti asked if this is after considering the comments that BLM was concerned about. Mr. White said the Wayside is not a protected area. The BLM Wayside on Four-Mile Canyon Road is a BLM parcel land where there are some historic Oregon Trail ruts visible. This is not considered a protected area; Staff looked at the Oregon Trail for the

Scenic Resource standard. Mr. White stated to decide whether the proposed facility would comply with the Council's Scenic Resources Standard, the Council must first determine whether the applicable land use or land management plans for lands within the analysis area identify significant or important scenic resources and values. The Council must then decide whether the proposed facility could be visible from areas addressed by those plans and, if so, whether the visual impact of the proposed facility would result in significant adverse impact to the identified scenic resources and values. Table 7 and this section discuss the land management plans for each of the areas and potential effects. The Department recommends that the Council find that the proposed facility is not likely to have a significant impact on the identified Scenic Resources. Mr. White stated he will discuss this further in reviewing comments.

Siting Standards for Wind Energy Facilities: Mr. White referred to pages 79 through 86, addressing OAR 345-024-0015. This discusses the cumulative impacts rule and includes Table 8, which lists the Wind Energy Project in the Columbia Plateau Region that have applied for permitting, or received permits, or are operating (as of March 2008). The number of turbines operating is expected to more than double in the next five years.

The applicant presented a study on cumulative impacts prepared by Western EcoSystems Technologies Inc. (WEST) and is in the Application Supplement as Attachment P6. WEST has done a lot of the fatality monitoring and reporting on other wind projects. WEST approached the issue of cumulative impacts on avian species for the first time. The discussion from page 82 brings out the following: WEST addressed the question of significance by comparing the fatality estimates from six operating wind facilities in the Columbia Plateau Region with data from the USGS Breeding Bird Survey (BBS) using horned larks as an example. The majority of avian deaths reported in the wind facility monitoring data from the Columbia Plateau region are of common passerines, and horned larks are the most common fatality (more than 35 percent of all fatalities). WEST considered the cumulative impacts from an estimated 4,060 MW of wind power facilities (proposed, under construction or operating) within 100 kilometers of the Shepherds Flat site. Applying the average annual regional fatality rates (described above) and the proportion of horned lark fatalities within all bird fatalities, WEST estimated that there could be 2,715 horned lark fatalities per year in the region resulting from wind energy development. WEST calculated that one-quarter of the annual fatalities (or 679 fatalities) would occur during the breeding season. Using the BBS data, WEST estimated a breeding population of 127,500 horned larks in the Columbia Plateau. Thus, the cumulative impact of wind development on horned larks would be the loss of approximately 0.5 percent of the breeding population. WEST concluded that this would not be significant. If the regional development of wind energy generation ranges up to 5,700 MW, as reflected in Table 8, the WEST analysis would estimate 3,811 horned lark fatalities per year or 953 fatalities during the breeding season. This represents approximately 0.7 percent of the breeding population.

WEST performed a similar analysis of the potential cumulative impact on raptors. Fatalities of red-tailed hawks and American kestrels account for more than 69 percent of

all raptor fatalities recorded at the regional wind projects studied. WEST estimated that the cumulative impact of wind development on red-tailed hawks would be the loss of approximately 0.26 percent of the breeding population in the region; the cumulative impact on American kestrels would be the loss of approximately 0.28 percent of the breeding population. If the future development of wind energy generation ranges up to 5,700 MW in the Columbia Plateau, the corresponding estimated cumulative impact would be approximately 0.4 percent of the regional breeding population of red-tailed hawks and approximately 0.4 percent of the regional breeding population of American kestrels.

Mr. White stated this is a very substantial effort to try to get at the issue of what is a cumulative impact and more importantly, how significant are cumulative impacts from wind projects causing fatalities of avian species within the region.

Based on the findings and subject to the recommended site certificate conditions described herein, the Department recommends that the Council conclude that the proposed facility complies with the Council's Siting Standards for Wind Energy Facilities.

Transmission Lines: In the EFSC rules there is a specific standard for electric fields that are generated by transmission lines. Discussion begins on page 86, and there is an analysis that demonstrates that the transmission line for this project, all lines proposed, would be compliant with standards.

Chair Shiprack asked if there were any comments before the lunch recess. There were none.

(The meeting reconvened after lunch at 12:45.)

Threatened and Endangered Species: Mr. White discussed the plant species and that ODOE feels any impact is insignificant.

Wildlife species includes several, but only one threatened species, the bald eagle. On page 95 it says, "Bald eagles forage and roost along the Columbia River. Eagles are unlikely to forage often within the site boundary due to the lack of suitable perch trees. There have been few sightings and no fatalities of bald eagles at wind energy facilities in the region. The certificate holder would mitigate the risk to bald eagles from wire strikes and electrocution by placing most of the facility collector lines underground. All aboveground transmission line structures would be designed in accordance with the APLIC guidelines to reduce the risks of wire strikes and electrocution (Condition 90). Met towers would be non-guyed structures to eliminate the risk of avian collision with guy-wires, and turbine towers would be smooth tubular structures rather than lattice towers to avoid creating perching opportunities (Condition 91).

For turbine types having pad-mounted step-up transformers, the transformer cabinets at each turbine would be designed to avoid creation of artificial habitat for raptor prey (Condition 63). As described in the Wildlife Monitoring Mitigation Plan (WMMP), the certificate holder would conduct standardized fatality searches of turbine tower areas and ongoing monitoring of all facility structures. The certificate holder would report any bald eagle fatalities attributable to collision with wind turbines or other facility structures. Under the WMMP, the Council may require additional mitigation if the fatality rate for raptor species exceeds a level of concern. Based on the limited use of the facility site by bald eagles and considering the mitigation measures that the certificate holder would implement, the Department recommends that the Council find that the proposed SFWF is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

There are two endangered wildlife species on the state list, the grey wolf and the Washington ground squirrel in the analysis area. Although the grey wolf is historically present in this part of the state they are believed to be extirpated (non-existent) within the state of Oregon. There have been reports of grey wolves coming in from Idaho. There are no reports in the project area.

The Washington ground squirrels are currently present within the analysis area, and one colony area exists at the edge of the site boundary in the southern project area. The location of that colony area is designated Category 1 under the Oregon Department of Fish & Wildlife (ODFW) habitat classification. There is an area bordering that Category 1 area that is designated Category 2 because it is suitable habitat for the squirrels and they could go into that area. By condition the certificate holder would avoid any disturbance to any Category 1 or Category 2 habitat, so there would not be any facility structures or construction impact in those areas. In addition, the conditions would require an additional 1,000 foot no-entry buffer (1,000 feet from the Category 2 boundary) if construction is in the area during the active squirrel season. Mr. White described aspects of the active season. At all times there would be a five-mile an hour speed limit. (In reviewing the comments, there will be more discussion on this subject.)

In addition there is another colony in the area that the applicant has selected for the habitat mitigation area. The applicant has designated a large area where the habitat mitigation would be located.

Fish and Wildlife Habitat: This standard is covered on pages 96 through 115. The general overview is the way ODOE has approached this in other facilities. First the applicant identifies the habitat place within the site boundary and classifies it according to ODFW categories, which includes six categories.

The applicant is then asked to design the facility with a hypothetical design that has the greatest impact on habitat and also a typical layout design to compare the figures. Those figures are in the Proposed Order Draft on pages 100 through 102, Tables 11 and 12.

The third part of the analysis is how the applicant would mitigate and monitor impacts. One primary mitigation measure is avoiding habitat. The original Notice of Intent site description boundary included 32,000 acres, which one-third of that amount has been cut out of the project because of riparian areas and other areas more valuable to habitat.

There are numerous conditions relating to wildlife habitat, the conditions that incorporate the three plans, which are attached to the Proposed Order as Attachments A (Wildlife Monitoring and Mitigation Plan), B (Revegetation Plan), and C (Habitat Mitigation Plan). Mr. White explained more on the monitoring procedures and mitigation plan. Based on the worst-case scenario the site for the mitigation area would be 166 acres, which would likely be smaller.

Standards Not Applicable to Site Certificate Eligibility: Pages 116 through 130 there is a discussion of a number of Council standards by statute may not be imposed on wind energy facilities to deny a site certificate. The affected standards are (a) Structural Standard (b) Historic, Cultural and Archaeological Resources (c) Public Services and (d) Waste Minimization.

Staff has recommended conditions for each of these standards. Mr. White did state there is one modification to this Draft Proposed Order, Condition 101, which is the Waste Management during Construction condition. The concrete trucks need to be rinsed out at the time of the pour and complete the washing offsite. There is a water use and discharge and to protect from runoff of the rinse water there was a commitment on the part of the applicant to have all of that discharge into a foundation hole so that it would not leave the site. That commitment is to be incorporated.

Council must determine whether the proposed facility complies with “all other Oregon statutes and administrative rules identified by the project order as amended as applicable to the issuance of a site certificate for the proposed facility.” Mr. White said those rules are discussed on pages 130 through 142. The topics are (a) Noise Control Regulations (b) Removal-Fill Law (c) Ground Water Act and (d) Public Health and Safety.

Mr. White discussed procedures for modeling to comply with the noise control regulations. The Removal-Fill Law protects wetlands and other waters of the state, requiring a detailed analysis. The Ground Water Act is an inquiry where the water will come from, for construction and for operation.

In summarizing the Public Health and Safety rules, Mr. White said there are discussions about (A) Fire Protection (B) Magnetic Fields (C) Coordination with the PUC and (D) Boardman Military Operating Area.

There is a special situation in this facility because of the proximity of the Boardman Naval Bombing Range and the approach routes. This is discussed on page 141 of the Proposed Order.

Attachment E (Draft Proposed Order Comments and Department Responses):

Boardman Naval Range. Mr. White referred to a map showing the Military Training Routes (MTR) and also comments by G.K. David, Naval Air Station, Whidbey Island, about the significant obstruction to the centerline and northern half of four low-altitude MTRs that overlay the proposed facility site west of the towns of Cecil and Morgan. The obstructions would force all low altitude flight operations to deviate south of centerline and over, or in close proximity to, the town of Morgan. Currently, Morgan is rarely over flown as they have had the entire MTR corridor available for maneuvering for many decades. The Navy is concerned that both increased jet noise and over flights of the town of Morgan may be considered adverse conditions or a detrimental impact by the citizens of Morrow County, Morgan and the surrounding area.

Mr. White stated that if the over flights present a risk to public health and safety, that risk now affects all residents within the training routes on the map because there is no restriction where the Navy can fly.

In response to this comment the applicant identified 34 residences within the corridor. In talking with Judge Tallman he pointed out some of those locations are grain silos and not actual residences so the number may be lower. Nineteen of the residences are located in the northern portion of the corridor, where future over flights would be avoided.

Mr. White continued to review the response stating the Navy's use of the southern part of the corridor would affect up to 15 (but probably fewer) the potential "detrimental impact" would affect fewer homes than are currently affected. Mr. White stated that from a safety standpoint it is actually safer to build the project to the extent that makes the Navy move its training route to the south.

In response to ODOE's inquiry to Carla McLane, Planning Director of Morrow County, there really is not a town of Morgan. Morgan is not recognized as an incorporated community and the area is zoned Exclusive Farm Use (EFU).

BLM Wayside Mr. White stated there are clearly visible historic ruts of the Oregon Trail. To protect the visual qualities of the Fourmile Canyon site the Prineville District's Management Plan proposes a protective corridor extending ¼ mile on either side of the main trail ruts. Depending on the amount of public land surrounding the individual trail sitings the proposed transmission lines will be well outside this corridor. The nearest proposed wind turbine location is on private land leased ½ mile to the southeast of the BLM Wayside. The visibility analysis indicates a large number of turbines might be visible from the Wayside. Mr. White referred to Page E-11 of Attachment E for further information in regard to the impact on the scenic value.

Weed Control & Sediment Runoff There were comments about the weed control and sediment erosion. A sediment control plan is required by the Department of Environmental Quality (DEQ).

Wildlife Mr. White referred to the public comments and ODOE responses. Daniel Dancer commented in part saying ““there are literally thousands of turbines that will soon be lining both sides of the Columbia River and creating a “wall” of 400-foot-tall machines that may have unforeseen impacts, especially on migratory birds. This needs to be considered in the cumulative impacts analysis. Population impact studies are needed to determine what toll these projects, in aggregate, will take on our native wildlife.” Another comment he made was “One of the big unknowns: migratory patterns. Very little is known about the migratory corridors in the area of this project, and most of the migratory activity of neotropical birds takes place at night. The applicant has apparently made little effort to study migration in this area, or to conduct any nocturnal studies.”

The response of ODOE stated that the Pacific Flyway, which is the north-south migration route for birds that winter in Central and South America, stretches over much of the area in Eastern Oregon and Washington (<http://www.birdnature.com/pacific.html>). Although wind energy facilities have been built in this region within the flyway, there have been relatively few fatalities of migratory “neotropical” species. Based on the available data, turbine-related fatalities of migratory birds have been low in the region.

The WEST cumulative impacts analysis notes: “Results of marine radar surveys for proposed wind projects have indicated that the vast majority of nocturnal migrants fly at altitudes that do not put them at risk of collision with turbines” (App Supp, Exhibit P, Attachment P-6, p. 16).

Mr. White stated there were considerable comments regarding potential cumulative impacts, which are noted In Attachment E, along with ODOE responses.

There was also discussion about the comments received from Leslie Nelson, The Nature Conservancy. One comment was concerning the Washington ground squirrel colonies and that the proposed project could further isolate the colonies located west of Shepherds Flat from the main population of Washington ground squirrels found at the Boardman Conservation Area and adjacent military lands. Staff responded stating that based on the existence of colonies of Washington ground squirrels in the Leaning Juniper II area (Gilliam County), the SFWF area (Morrow County) and the Stateline area (Umatilla County) as reported in the site certificate applications for those projects, it appears that many separate ground squirrel colonies exist outside the Boardman Conservation Area.

Another point brought out by The Nature Conservancy was in regards to removing three proposed towers located near a Washington ground squirrel colony. Mr. White stated that in support of that request, the comment states that an access road would directly affect the ground squirrel. Mr. White referred to a map showing the area in question and stated that the existing road is the only road in the vicinity that meets Ms. Nelson’s description; however it is outside of the site boundary and is not a proposed project access road. Mr. White further discussed the ground squirrel colony and its location.

Lori Brogoitti referred to the aerial photo that shows outbuildings and a residence and questioned whether it is far enough away for the noise standard. Mr. White said the project has to meet the noise standard so this would be a requirement if turbines are located near there.

Chair Shiprack asked about the landowners and how much land they own. There was discussion about three families that own sheep.

Mr. White stated that as far as planning the next meeting for this project, it could be scheduled for the last two weeks in July, unless there is a contested case.

B. National Energy Conference Information

Jan Prewitt, Oregon Department of Justice, attended the National Association of Attorneys General Conference on Energy that Lawrence Wasden, Attorney General of Idaho presented.

The first part of the conference reviewed ideas regarding the fact that the ordinary consumer of energy whether it be electrical, natural gas, or gasoline, does not understand the entire system that is necessary that is necessary to bring that product to them. People oppose things sometimes because they do not understand them.

Ms. Prewitt said the conference showed there is a disproportionate discussion right now about renewable energy and that renewable resources are not going to provide enough energy by themselves. There were many PowerPoint presentations available; some are available on the website www.naag.org

Ms. Prewitt reviewed some of the presentations. Peabody Energy spoke about coal and the emissions. World climate change is real and has been accepted by scientists.

A representative from Wal-Mart spoke about equipment at some of their stores that have technology to monitor energy consumption at the store level, even the individual freezer level and to be able to see if there is a spike in energy use.

Liquefied natural gas was a topic which FERC has jurisdiction over. FERC has always had jurisdiction over interstate gas pipelines as well. States are no longer involved in providing natural gas import terminal facilities; FERC is the regulator. There is a provision in the Energy Policy Act of 2005 that permits states to be involved in state and local coordination for LNG facilities. The Department of Energy is the state's representative in that process. There was discussion about eminent domain issues that FERC can utilize over state and local jurisdiction.

Another topic at the conference was in regards to dealing with new demands. The figure of 170,000 MW of new generating capacity will be needed by the year 2030 if the same demand growth curve continues. Resources mentioned to meet this need were nuclear power and coal. There are nuclear facilities proposed in Virginia at the present time.

Specific strategies for nuclear include a restructured licensing process and standardized technology. A lot of states have nuclear moratoria but in some states legislation to change the nuclear moratorium or repeal it has been proposed.

Ms. Prewitt referred to the table showing that states are able to determine coal policy. States are deciding different standards and the coal industry does not like this difference from state to state.

Ms. Prewitt discussed the lack of infrastructure that is responsible for developing hydrogen energy. There was discussion among Council members about future developments. The Lieberman Warner Bill was a point of discussion also.

Bob Shiprack asked if there were any other comments.

David Niekirk referred back to the 1950's when McNary Dam was built and issues that came up afterwards. He commented on the studies being done on wind facilities and that future issues need to be studied more.

Charles Barker, resident of Wasco County, commented on ethanol. He made the comment that water and 50 pounds of corn would fill up a Yukon SUV tank one time. He said that is more corn than he eats in a year. He did not like the language of "temporary or permanent" impact. Those statements sound like loose language. He stated he is not referring to one particular project but the cumulative impacts of facilities.

Mr. Barker did refer to the Cascade Wind Project and the problems that have been happening.

Chair Shiprack asked for further comments; there were none.

Future meeting dates were discussed.

Chair Shiprack adjourned the meeting at 2:52 p.m.