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# OREGON ENERGY FACILITY SITING COUNCIL MINUTES

## April 30, 2010

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### OREGON ENERGY FACILITY SITING COUNCIL (EFSC)

*W. Bryan Wolfe, Chair*

*Lori Brogoitti, Vice Chair*

*Bob Shiprack*

*Jacob Polvi*

*Trey Senn*

Meeting: April 30, 2010 – 9:35a.m. The Dalles, OR

(Regular Oregon EFSC Meeting)

**Minutes**  
**Energy Facility Siting Council Meeting**  
**Discovery Center**  
**5000 Discovery Drive**  
**The Dalles, OR 97058**  
**April 30, 2010**

### **I. Consent Calendar:**

#### **A. Opening Comments**

Chair Bob Shiprack called the meeting to order at 9.35 a.m.

Council Members Present; Bob Shiprack, Lori Brogoitti, Jacob Polvi, Bryan Wolfe, Trey Senn.

Council Members Absent: Michael Haglund

The chair confirmed that a quorum of council members were present.

### **II. Action Items:**

#### **A. Council Action on Petition for Rulemaking**

The Oregon Natural Desert Association (ONDA) petitioned the council to undertake rulemaking, which the Council is currently considering. Public comments on the petition have been received and the comment period closed prior to the meeting. Jan Prewitt, Oregon Department of Justice (ODOJ) counsel to the Siting Council, described the Council's rulemaking process, which generally follow the Administrative Procedures Act provisions . Focus was given to implementing rules that relate to factors the council considers such as determining whether to approve or deny a petition. Ms. Prewitt referred to an April 18 memo prepared and sent out by Oregon Department of Energy (ODOE) staff ; the memo, contained six considerations for the Council to use when considering rulemaking, which are as follows: .

Council considerations:

- Continued need for the rule;
- Nature of complaints or comments received concerning the rule from the public;
- Complexity of the rule;
- Extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations; the extent feasible with local government regulations;
- Degree to which technology, economic conditions or other factors have changed in the subject area

affected by the rule;

- Statutory citation or legal basis for the rule.

When utilizing these considerations, the Council will be prepared to make recommendations or direct staff on what to put in the order. Ms. Prewitt also mentioned that the Council should determine whether options exist to achieve rule goals that reduce economic impact on businesses.

In Ms. Prewitt's opinion, ONDA's request that the Council adopt temporary administrative rules clarifying EFSC jurisdiction over segmented projects and begin a rulemaking to adopt permanent rules exceeds the Council's jurisdiction because it combines individual facilities into a single facility; this is not within the statutes that the Council follows.

Bryan Wolfe moved to reopen the public comment period on this petition. Trey Senn seconded the motion and the Council was polled.

Ayes: Lori Brogoitti, Bryan Wolfe, Jacob Polvi, Trey Senn, Bob Shiprack

Nays: None recorded

The public comment period was re-opened. Tom Stoops commented on the procedure to be used during the meeting, so comments would be heard and entered into record.

Joan Frazier, Deputy Director for (ODOE), read a letter directed to the Council from Director, Mark Long, advising that the Council defer issues concerning "Single Energy Facility" to the upcoming Legislature, to assure a diverse audience and considerable public involvement.

Hanley Jenkins, Union County Planning Director, and member of the Association of Oregon Counties (AOC) Wind Energy Taskforce, commented: "It is the taskforce's position that this rule is not needed because of the AOC Wind Energy Taskforce. Over the past year the Taskforce developed the Wind Energy Guidelines for application of wind energy production, which could be reviewed at the local level. The guidelines could be used by counties when developing their own ordinances and review of applications at the county or local level. The AOC board has continued the Wind Energy Taskforce functions; they've identified additional responsibilities for the Taskforce, and met yesterday, in The Dalles, to discuss important wind energy issues identified by the AOC board that need to be addressed between the Oregon Energy Facility Siting Council review process and the local government review process for projects. So, in summation, Mr. Jenkins' comment was that you don't need this rule in order to meet the functions that it would serve.

Lori Brogoitti asked if the AOC Taskforce created a recommendation for projects crossing county lines. Mr. Jenkins said that the Taskforce had not created recommendations.

Carla McLane, planning director of Morrow County, spoke to item four of a letter to the Council's packet from the county court, signed by all three commissioners. Ms. McLane noted the last paragraph, which stated "to the extent feasible with local government regulations(will this rule overlap?)." Ms. McLane stated that if the Council pursued this that it would be overstepping Council boundaries. Counties clearly have jurisdiction to site energy facilities under 105 Megawatts. A council review of this jurisdiction is treading on statutory authority the Counties hold, specifically ORS 215-283, sub (2) sub (g).

Art Schlack, from AOC, referred to a letter that the AOC submitted and dated April 2, 2010 which states several questions and responses to the questions. Mr. Schlack commented on questions 3 and 4. Question 3 was about the complexity of the rule and that AOC would note that the existing rule was quite clear, concise and functions well. He noted that the word/term 'single' was not clearly defined; however, Webster's Dictionary defines the word as "something that stands alone." Since this refers to land use, it is not

uncommon for projects in the area of the land use system that are phased, or look very similar side by side. Schlack said if there is demand for a project that has adequate infrastructure and it can stand by itself; it is considered a single project.

On question number 4, Schlack said the AOC reviewed the proposal and found that it conflicted with ORS 215.283 sub (2) sub (g), whereby the Oregon Legislature clearly provided authority for counties to consider siting Wind Energy facilities under 105 Megawatts. We recommend that the Council not approve the proposed petition at this time because it conflicts with ORS 469.311 (a) and ORS 215. The OAC urges the Council not to support the request for rulemaking on this issue.

John Norling, General Counsel for Columbia Energy Partners, mentioned that written comments were submitted on the petition in light of the criterion set forth in ORS 183.390 and believes that under several of the criteria the petition should be denied. Norling does not believe there is justification for the rule; the rule is complex, given the language targets more than what was intended. The rule was created to look at adjacent facilities, yet the language would encompass a lot more, causing the Council to assert jurisdiction over permanent and operating projects. Norling thinks that the proposed rule conflicts with the Council's statutory authority, existing regulations and statutes. Mr. Norling also believes the proposed rule would have a significant impact on small businesses, requiring almost every energy project, regardless of size, to come under this jurisdiction because of the mandatory nature of the proposal. He urges the Council to deny the petition.

Judge Grasty from Harney County commented on number five, concerning economic conditions. Projects offer individual ranchers in our community solid economic conditions for many years to come. By combining two projects, the county governing body, and county court negotiations on the strategic investment program would stand to lose half of these. The impact to the community would be huge. Judge Grasty urges the Council to deny the petition.

David Welch from the Oregon California Trails Association urged the Council to undertake this rulemaking effort or seek the advice of the Legislature. Welch believes there is a need to address the issue of the boundary "105 Megawatts." The division between small and large projects is causing some to take advantage of this boundary. On the Council's website under the date of May 26 2009, twenty-eight Oregon Wind Energy projects are listed. Ten of the 28 were under review by the Council; 18 were not. Ten out of the 18 projects are either completed or approaching 90 Megawatts. Welch questioned why projects were determined as small projects when they were in essence large projects?

Jacob Polvi asked Mr. Welch what he would recommend the the Megawatt limit be, if not 105? Mr. Welch stated he would defer the question and not attempt to rewrite the rule.

Liz Nysson, from the ONDA addressed number two: the nature of complaints or comments received from the public. Nysson suggested a need for rulemaking because of the ambiguity of the definition. She also mentioned that siting multiple projects under the threshold together does create a problem because of accumulating impacts to the natural environment, given Oregon Department of Fish and Wildlife does not have the ability to evaluate projects, therefore, all of the impacts are not being evaluated properly.

Borden Beck addressed the Council on this issue previously, but spoke about number one, the continued need for the rule. He viewed this as an unresolved, controversial issue, and believes it is up to the Council to work out a decision concerning projects that are slightly under the threshold. Beck would like to know the number of projects that are contiguous; next to each other; related projects because they are using the same transmission lines; the same company; or adjacent to each other with the same ecological impact. He is

skeptical of having to put this off for future policies because it could exacerbate the problem, so should be dealt with today. Beck urges the council to undertake rulemaking to address these concerns.

A month ago, Fred Sawyer addressed the council about the subject. Sawyer believes the rule is needed because of current views. Some feel it is inappropriate to put wind turbines in some of the most iconic places in Oregon, example e.g. "Tigard Gorge." Putting wind turbines in such locations could mean the loss of the wildlife component. When turbines were constructed, the community was not aware of the proposals so the input from the community was not heard at the county, or it would have been opposed. Mr. Sawyer believes that wind power is not appropriate in important iconic locations.

Andrew O'Connell, Diversified Wind Development, is also a native Oregonian. He feels that the local communities should not be told what to do; they should be allowed to make their own decisions. He feels the proposal lacks an understanding of Eastern Oregon Communities. The people, who are most concerned about these projects, are the local communities. They should be able to make balanced decisions on the issues. O'Connell believes it is dangerous for those who misunderstand Eastern Oregon communities, to support a misplaced proposal where existing functions are being duplicated.

CM Motley, who owned 850 acres of the Tigard Gorge, mentioned that the wind turbines were built on private land and believes it is his right to do what he wants to do on his own land. He felt the petition was out of order and was not made known to the landowners. The environmental agencies did not approach the landowners about the petition; when he heard about it, the hearings had already commenced. This is why he urges the Council not to approve this petition.

Pat Hayes, of Hood River, said that the Hood River residents desired Council's protection against their County Commissioners, who want to place a Wind Farm in an iconic area of Hood River Valley. Many residents are opposed.

Chair Shiprack asked for further comments; there were none.

Lori Brogoitti moved to close the comment period. Trey Senn seconded the motion and Council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

The Council closed the public comment period.

Lori Brogoitti requested a summary of the six questions, which Tom Stoops summarized the in his document. Bryan Wolfe said that the Legislature set the boundary to 105 MW, their 'magic number'; therefore, it would be appropriate to refer this back to the legislature for review of their determination. Mr. Wolfe stated that as a proponent of addressing cumulative impacts, having the legislature involved would be good.

Trey Senn agrees and feels that it's important not to differentiate from the legislative decision to set the line at 105 Megawatts. Jacob Polvi is ambivalent about the issue because it has been discussed for the past four years and supports taking it up with the legislature. Lori Brogoitti agreed.

Jan Prewitt proposed summarizing the sense of the Council for use with the Council decision. The Chairman, Bob Shiprack said there would be a written document on the decision and a summary would be helpful.

Chairman Shiprack noted the advice from staff, the Director and the Attorney General's Office that suggested the petition may be outside the authority of the Council. Council is going to create a record clarifying to the public what the issue is: There is an ambiguous rule that needs to be fixed; the legislature revises the rules,

and therefore, needs to review the issue; he hopes that this will force an action, and both sides will stay involved with the legislature until the issue is handled.

Chair Shiprack wants the legislature to hear from the public around the state about Wind Energy development. He cautioned that the Legislators may be isolated from the issues unless they live near projects. Chair Shiprack urged the Wind Energy Taskforce to make the guidelines a requirement or put into statute or rule for clearer understanding of how projects under county jurisdiction are decided.

Jan Prewitt reminded the group that "item number one, the need for the rule" the issue needed legislative direction. Instead, she asked Council to express, on record, their sense of whether they would deny the petition for Rulemaking or to grant the Petition for Rulemaking.

Trey Senn asked asked for further comments from Council.

Tom Stoops mentions that on item B, the nature of the complaints or comments received concerning the rule from the public, the public has consistently voiced concerns about projects under 105 MW thresholds for state review. Council indicated there was ambiguity which needs to be clarified. Public concerns included degradation of property values, impacts on wildlife and aesthetics, and wanting the counties to uphold the process. The counties did respond to that expectation through AOC. AOC needs to be more forceful with the counties in their guidelines to help them move the process along.

Mr. Stoops also mentioned the concern for the time it took the Council to process applications; the cost and problems created for small businesses. The council has heard on more than one occasion the need for additional mitigation on the cumulative impacts issue. The Council could undertake the use of the Energy Generation Authority, which Mr. Stoops suggested as a separate dialog to have at a different time.

Lori Brogoitti is concerned that if legal problems come up, that are not in the Council's legal rights to make these decisions she is not personally comfortable with passing this petition because of this reason. She understands why it's being done, but wants to make sure that legally we're on the right track.

The Chairman summarized the issue. Technology, economic conditions, or other factors have changed the subject area affected by the rule. The staff analysis pointed out that things are changing, previously wind turbines offered less than 1 Megawatt, but are now approaching 3 Megawatts. Other economic conditions and wildlife issues were brought up. The Council's jurisdiction is limited regarding the statutory citation of the legal basis for the rule.

Ms. Prewitt felt that the notice requirement on the Council call out for the economic impact on small businesses has been satisfied. The requirement ORS 183.390 sub (2) is that the Council must invite public comment on options for achieving the substantive goals and to rule in a way that reduces the negative economic impact on businesses.

Mr. Wolfe moved that the Council direct the department to prepare a letter for the Chair signature denying the Oregon Natural Desert Association petition. Lori Brogoitti seconded the motion and the Council was polled.

The Chairman remarks that he supports the motion. He hopes the legislature reviews the petition because it is important to get some clarity.

Bryan Wolfe challenges everyone to get involved in getting resolution to the items that were discussed.

Jacob Polvi is a little afraid of the iron law of unintended consequences where the Council resolves a problem, but by doing so creates another challenge or loophole.

The Council is polled:

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

The motion was passed.

The meeting went in recess at 10:17, 10:28 reconvenes.

## **B. Council Action on Petition for Rulemaking**

The Council had been petitioned to enter into rulemaking to delete the Umatilla County Energy Generation Area petitioned by the Umatilla County Board of Commissioners.. Council had previously agreed to enter into rulemaking. Rulemaking was conducted by staff. Council needs to take action on the petition.

Vijay Satyal was the hearings officer for the Umatilla County's petition on rulemaking.

Mr. Satyal stated that this rulemaking was about amending OAR 345.001.0220, subsection (1) to remove the Umatilla County Energy Generation Area. Two public hearings were held in response to a petition. The first was on March 3<sup>rd</sup>, at 9:00 a.m. in Umatilla County. There were five members of the public present; three gave testimony. The second was on March 9<sup>th</sup> in the ODOE main office in Salem. Members of the public were not present; therefore, no comments were taken. The second hearing remained open for 45 minutes and included the phone lines. There is a transcript of the hearing and a witness who was on the staff.

The chair mentions three potential motions: Potentially looking at the Energy Generation Area rules, for which the Council has the statutory authority, which allows Council to establish other Energy Generation Areas. There is some interest on the part of the Council to examine expanding some of the Energy Generation Areas. If the Council wishes to allow the petition to abolish the Umatilla EGA, but then direct the staff to examine the whole area of Energy Generation Areas across the State, they could go into rulemaking.

Tom Stoops stated the Council could go through several processes by directing staff to look into it, report back to Council, and collect public comments at that stage, or direct staff to draft a rulemaking and institute rulemaking; go through the rulemaking process, including workgroups with the public. The degree of formality would be what the Council decides. . There is going to be a lot of discussion about Energy Generation Areas.

The Chair does not have an opinion on whether the areas should be expanded or abolished. He asked for comments from the Council, for example, what they thought about going in this direction or deciding up or down on the petition.

Lori Brogoitti feels that the best option is to approve the petition, and then direct staff to look at Energy Generation Areas across the state.

Bryan Wolfe concurred and wanted to direct staff to look at Energy Generation Areas, get feedback from the public, and come back to the Council with a recommendation.

Jacob Polvi agreed with Ms. Brogoitti and Mr. Wolfe; however, would like staff to come back with comments and some sort of plan on how to move forward in rulemaking.

Trey Senn asked if this applied to all kinds of energy, natural gas, biomass; what the parameters are.

Lori Brogoitti responded that it applied to renewable energies. The Chair asked what the statute said.

Ms. Prewitt explained that Energy Generation Area is a defined term in the statutes and concerns electric generating capacity of 35 Megawatts or more, if the power is produced from geothermal, solar or wind energy

at a single energy facility, or within a single generation area. So, the statute specifically refers to renewable energy resources within the definition that uses Energy Generation Areas.

Chair Shiprack asked if there could be multiple types of energy generation present. Ms. Prewitt replied that there were a number of ways you could look at it, but the Council would be comparing the effects of multiple renewable resources, either of the same kind, or possibly of a different kind, within a defined geographical area. There appears to be some support for granting the Umatilla County petition.

Jan Prewitt said for the record the Council should act separately in two matters before the Council, one of which is the decision about rulemaking, and the second one is about further directing staff on the issue.

Bryan Wolfe moved that Council approve and accept the hearing officers recommendation to amend OAR.345-001-0220 related to Energy Generation Areas as presented in the Hearing Officer's report presented today.

Ms. Brogoitti seconded the motion.

Ms. Prewitt clarified that the motion should say Council is amending the rule.

Ms. Prewitt read the amended language: concerning Energy Generation Areas, the council may generate geothermal, solar or wind Energy Generation Areas by rule. Mr. Satyal mentioned that everything following that would be stricken as a result of a motion to appeal the existing rule, except the amendment. The Chair clarified that the motion eliminated the Umatilla Wind Generation area.

The council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

The motion was passed.

Staff will write the Department of Energy to analyze the Energy Generation Areas and make recommendations to the Energy Facility Siting Council.

Trey Senn asks if this ends the boundary areas that the Council was just given, or are we talking about the entire State of Oregon? The three areas would be: geothermal, solar and wind.

Tom Stoops summarized: there is a request that staff look at Energy Generation Area return to the Council with a recommendation.

Vijay Satyal asked what the Council like to see in the analysis that represents the recommendations. Could the Council please elaborate on what this should include?

Lori Brogoitti: Analyze comparatively what the benefits would be of Energy Generation Areas, what the disadvantages would be, determine the climate, and type of areas that we would look at for Energy Generation Areas. Mr. Satyal: review wind, geothermal and solar? Ms. Brogoitti: Correct.

The Council is polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

The motion passed.

Mr. Wolfe needed to leave to catch a flight, but agreed to stay a little longer for a few Consent Order items.

#### I. **Consent Calendar:**

**A. Klamath Biomass Facility**

Duane Kilsdonk, project officer for the Klamath Biomass Project requested Council approve use of the contractor, to participate in the review of the application for site facility. The facility is the Klamath Biomass Project, near Klamath Falls Oregon. The Chair explained the procedure. The contractor is the Council's reviewing contractor, Golder Associates.

Bryan Wolfe moved that the Council approve the contract with Golder Associates on the Klamath Power Energy Project. The motion was seconded by Trey Senn.

The Council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

**B Klamath Biomass Facility**

The Klamath Falls Bioenergy Facility: Council needed to elect local county commissioners to be a special advisory group. ORS 469.481 requires this.

Bryan Wolfe moved to appoint Klamath Falls County Board of Commissioners as a special advisory group on the Klamath Bioenergy Facility. Mr. Senn seconded the motion.

The Council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

The motion was passed.

**C Saddle Butte Wind Park**

The Council should appoint a Hearing Officer for the Saddle Butte Wind Park. ORS 469.470. OAR435.15.0023 required the Council to appoint a hearing officer to conduct a testing case on behalf of the Council; staff requested that a hearing officer be assigned for the Saddle Butte Wind Park. Staff suggested John Burgess, Attorney at Law.

Trey Senn moved that Mr. John Burgess be appointed Hearing Officer for the Saddle Butte Wind Park. Ms. Brogoitti seconded the motion.

The Council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

Motion passed.

**D Montague Windpower Facility**

Appointment of a Hearing Officer for the Montague Wind Power Facility: Tom Stoops recommended John Burgess, Attorney at Law.

Trey Senn moved that Mr. John Burgess be appointed Hearing Officer for the Saddle Butte Wind Park. Ms. Brogoitti seconded the motion.

The council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

## **E Summit Ridge Wind Project**

Summit Ridge Wind Project: Appointment of a Hearing Officer: staff recommended John Burgess, Attorney at Law.

Trey Senn moved that Mr. John Burgess be appointed Hearing Officer for the Summit Ridge Wind Project. Ms. Brogoitti seconded the motion.

The council was polled.

Ayes: Bryan Wolfe, Jacob Polvi, Trey Senn, Lori Brogoitti, Bob Shiprack

Nayes: None Recorded

Motion passed.

Bryan Wolfe departed and the Council no longer had a quorum.

## **II. Informational Items**

### **A. Presentation of Oregon Natural Desert Association petition for rulemaking to define the Steens Mountain Cooperate Management Area as a protected Area.**

Liz Nysson represented the Oregon Natural Desert Association (ONDA), the Audubon Society of Portland and the Defenders of Wildlife, who jointly filed the April 2nd petition. ONDA has over 1500 members, which included the other petitioners and their membership. The three petitioners think that it is important that projects are set outside areas where there are sensitive habitats, special designation or other environmental concerns. The intention of the petition is to add a federally designated place to the State's list of protected areas. And that place is the Steen's Cooperative Management and Protection Area.

LizNysson: Oregon Administrative Rules list of protected areas is comprehensive and includes a large variety of areas and was surprised that the SMCMA wasn't in there. There are items with a very similar designation, for example, the Columbia River Gorge National Scenic Area. The reason that the SMCMA is not in the list might be that the area was created in 2000, or was it because the list was created prior to 2000? Or was the area omitted because it is just different?

The Steen's Act implied that the area should be void of industrial development. The purpose of the Cooperative Management Protection Area was to conserve and protect and manage the long term ecological integrity of Steen's Mountain for future and present generations. The second portion from Section 122: "And it is development on public and private lands within the boundaries of the Cooperative Management Protection Area, which is different from the current character in uses of the land is inconsistent with the purpose of this act."

Steen's Mountain is a place protected in 2000 through a collaborative compromise. It is public law. Issues that could come up if projects are sited in the CMPA, whether or not they're on private lands, federal agencies would be forbidden from facilitating any development on CMPA based on the language within the act.

Developers may not be able to access federal funds or subsidies to develop projects within CMPA. The intent of creating a management area with both public and private lands was creating a seamless management of this area between the public and private lands. DOM would not be able to put any kind of development, especially wind development, within the CMPA. It is contrary to the act, and creates an obstacle for

management if private lands permit development of wind energy or solar facilities. So, that is why we have that petition before you.

Within the petition is a map of the CMPA boundary. The red line is the CMPA boundary, and blue line is the geothermal and mineral withdraw area, created to limit extraction of minerals and geothermal within that area because of environmental concerns. The act was created to protect the ecological integrity of this area.

A statement from Senator Wyden, October 12, 2000, the day the act was filed: "what we have done is truly bipartisan and truly historic." The act was created to protect the area by both the ranching community and the environmental community together; it was a compromise. The organizations want to add this to the List of Protected Areas because it is already federally protected. The Council should stay true to what has been done, and add a place to the comprehensive list, which includes any kind of designation within the State.

Tom Stoops: requested the Council direct staff to provide public notice and open a comment period on the proposed petition, and report back to Council at the June 11<sup>th</sup> meeting. Then Council can move forward with a decision on whether to approve or deny the petition for rulemaking. A petition is always on a 90-day decision track. If the Council grants rulemaking it would then go into a rulemaking process. If denied, an Order would be created and given back to the petitioner. Mr. Stoops asked for the ability to notice this to the public, to gather public comments, and then return on June 11<sup>th</sup> to report on public comments, for Council to discuss.

The Chair asked for comments. Tom Stoops introduced Judge Grasty, and mentions that there were others who wished to comment. The Council was not in a public comment period but thought they could hear the comment but would have to return to public comment and reiterate any points made.

Judge Steve Grasty, Harney County Judge: Requested that the June 11 meeting be in Harney County. Everyone who was running for elect office and present agreed. The difference by which the Steen's Mountain Act is interpreted should not be a Council responsibility. The Steen's Mountain Act was meant to be a new way of doing business, and not a starting point for a new round of negotiations. No need to deny this, but when the hearing moves to Harney, "we will be there."

Jacob Polvi asked Judge Grasty if there was a BLM representative who could present the act. Judge Grasty: suggested asking one of the legislators or one of their representatives; a person who helped write the act. Chair Shiprack asked Judge Grasty to suggest names. Judge Grasty agreed.

Trey Senn: Was this coordinated by Greg Walden's office too a few years ago? Judge Grasty: Yes.

Steve McClure (Union City County Commissioner with the Budget Commission) thinks it would be appropriate to have the hearing in Burns so the community could attend.

Art Schlack, AOC: Urged Council to hold the meeting on June 11<sup>th</sup> in Harney County. There have been issues with regard to "notice," which he discussed with Council staff. He encouraged the notice to go to all 36 Counties and the Association of Oregon Counties. There is interest from a number of counties in an icon of this type.

Lori Brogoitti: Have the meeting in Harney County and allot time for a tour of Steen's Mountain.

Jan Prewitt, Assistant Attorney General, provides an overview of the six rulemaking questions. She would:

- Help draft a notice for the proceedings so people would know they should comment on the six questions plus the economic impacts on small business question that is separate from the six.
- The Council staff would prepare notices and Council would receive comments on those questions.
- Council would deliberate based on the questions.

Chair Shiprack asked: was staff planning to research the request, and then return with their findings on June 11<sup>th</sup>. Does this mean two meetings?

Tom Stoops: ODOE staff would create a “notice,” announcing to the opening of a written comment period—along with the petition—and solicit comments based on the six questions for Council consideration. Once staff received responses, they would assemble the information and provide that to Council prior to the June 11<sup>th</sup> meeting. At the June 11<sup>th</sup> meeting there would need to be time for public comment, Council deliberation and decision making in time for the 90-day clock. If another emergency meeting was necessary, the Chair could call one. Staff and Council should expect written comments but verbal comments later. Chair Shiprack explained that this was part of the Administrative Procedures Act.

The Council currently doesn’t have a quorum, so Stoops’s request for a motion directing staff to prepare the notice and open a public comment period to solicit comments on the petition, wasn’t possible. Jan Prewitt stated that this was more of an informational item for the Council than an action item.

The Chair opened the public comment period.

Art Schlack stated that cumulative impacts were not uncommon to Counties. Counties generally look at their local comprehensive plan as a vehicle to take a look at community impacts similar to how Council looks at the land use planning goals, the implementation of the planning goals, and many times goal five resources deal with a lot of those issues at this point. Mr. Schlack suggested ODOE staff and Council representative sit down with Counties and undertake a discussion about cumulative impacts.

Mr. Schlack thinks that a conversation that we could have might start us down a path of whether is it a local comprehensive plan, whether it is other vehicles, how we can begin to address those kind of questions. They are vexing, to at least Counties in some instances, as well as your staff and you, as you look at your permitting process at this point. He would also suggest that we include some of the State Agencies at this point. Because we look to the State Agencies, we've had conversations with them; they were involved in our Wind Energy Taskforce as we looked at the process.

Mr. Schlack expressed an interest on behalf of the Association of Oregon Counties and Counties.

Carla Mclane, Morrow County Planning Director: Invited everyone to the local County Planning Commission Meeting. She would be happy to send an agenda for the next Morrow County Planning Commission meeting..

Borden Beck: How do you evaluate written questions on the rulemaking process? He wanted to assure that the Council receives and reads questions from Harney County; they need to be heard and so should Council. Chair Shiprack reassured Mr. Beck about the process.

Sue Oliver with the ODOE in the Hermiston Office and project officer for the Antelope Ridge Wind Farm Project proposed that the meeting be held in the City of Union. The city is in close proximity to the facility.

The Chair asked where the application was in the process. Ms. Oliver: The Horizon Wind Energy application was submitted in October. ODOE requested additional information. ODOE is reviewing the response, so the application is not complete and ready for public comment. Oliver anticipates a month or two.

Mayor Lindsley who was present and representing the City of Union, requested Council to provide comments specific to the proposed application of Horizon Wind Energy, to construct 182 wind turbines at 200 degrees around the City of Union. The proposed development presents a significant impact on the city because the city needs to complete an analysis by the proposed deadline, which will be necessary for the Siting Council’s deliberation. The city is a “reviewing city” for the Antelope Ridge Wind Farm Application and the analysis area for public services; the city requests financial assistance to complete the analysis on the project.

The Council does have the authority to directly reimburse local government on costs related to the review of a Site Certificate. Jan Prewitt gave an overview of the statute, which permits the Council to enter into contract with local government to help defray costs of developing an "analysis," if Council determines the city needs the help. Meanwhile, the county should figure out what the contract should entail and submit it to Council for approval at a later time. Mayor Lindsley explained that the City of Union had a staff of only one person, so this would be a large amount of work. The mayor said it was his understanding that the city would be able to hire a professional person. Stoops said this would be part of the Council's ORS 469.421 fees and the fees would propagate through to the developer as part of the review cost.

Tom Stoops suggested that staff go back and work with the City of Union to clarify some of the points made in the rule. If Council action is needed then staff could organize and send out a "notice" for a teleconference for a specific action item. Ms. Prewitt said it should be for purpose of reviewing the application, aiding the Council with their decision.

The meeting is in recess for lunch until 12.10 pm.

### III. **Consent Calendar**

#### A. **Approval of Minutes**

There are no prior Council minutes ready to approve.

#### B. **Personal Recognition**

Duane Kilsdonk of the Hermiston office is going to work on the Klamath Biomass Project and working with AMEC to help develop a clients' matrix for inspection plans.

Adam Bless announced his departure. He thanked everyone for 19 great years and shared that "we'll be watching you from the Public Utility Commission (PUC)." The PUC is convening a policy technical group to look at Smart Grid technology and how they're going to implement it into PUC policy.

#### C. **Appointment of Hearing Officers, Reviewing Contractors, and Special Advisory Groups**

See above, the meeting had to change due to Bryan Wolfe's early departure.

#### D. **Project Updates**

John White, Project Officer for Montague, pronounced Mon-tag. On the Council table is a supplement to the application for Iberdrola Renewables' Montague Windpower Facility. The application has been declared complete and has been filed. It is anticipated that the first reading of the draft Proposed Order will be in July. Updates on the radar issue?

John White: It's federal law for Wind Project Developers to submit a Notice of Proposed Construction specific to each turbine location, for a Site Certificate. They submit the notice to the FAA as well as to the Oregon Department of Aviation. The FAA reviews turbine locations for potential hazards to air navigation. In the case of Shepherds Flat the developers submitted over 300 notices.

The FAA issued what they termed a 'Notice of Presumed Hazard' or potential hazard for every single location, which prompted an investigation. FAA can then either determine hazard, or determine no hazard before an applicant can proceed to build the project. An investigation is currently ongoing.

The reason given by the FAA for their notices of presumed hazard was alleged interference with the military radar located in Fossil, Oregon and whether the wind turbines would interfere with the radar's ability to detect air traffic. FAA issued the same kind of notices of presumed hazard to Iberdrola who is now constructing Juniper II. The FAA is issuing notices following the development of a thousand or more wind turbines in the airspace viewed by this radar installation. The Air Force has stated that they have a problem

with wind turbines. Caithness Energy, the parent company for the three Shepherds Flat projects, has geared up to commence construction tomorrow (May 1?). Each day that goes by carries a financial penalty for the company and people are not able to work on the projects. The notices have created a considerable obstacle, so developers have addressed the issue to the highest levels in Washington DC.

Oregon Senator Ron Wyden has played a key role in responding to developer concerns, as well as other projects which could be thwarted by this kind of “blanket denial of notice.”

The Gilliam County project has a Site Certificate and is already under construction. Some of the turbine locations have already been cleared by FAA; therefore, Iberdrola could proceed.

The erection of turbines wouldn't happen until next year, so there is time to fix the radar at Fossil. It would potentially apply to just the whole area that we've been working on for the past ten years developing wind projects; this issue could put a damper on future projects, so it is critical that it get resolved.

Duane Kilsdonk noted that on April 5<sup>th</sup> 2010 the ODOE received a Notice of Intent from Klamath Falls BioEnergy LLC. The proposed facility would burn biomass wood waste in a fluid bed boiler. It would produce steam, driving a turbine generator to produce up to 35 Megawatts. The site location is approximately 2 miles southwest of the existing Klamath Cogeneration and the Klamath Generation Peaker plants. The facility is expected to have a footprint of 25 acres within an 80 acre facility. The public information meeting for the project is scheduled for next Wednesday in Klamath Falls.

Chair Shiprack: What is the Council's jurisdiction was on biomass? How many Megawatts? Tom Stoops: 25 Megawatts because it is a thermal power plant.

Sue Oliver updated the group on the Antelope Ridge project stating that ODOE was still working on a request for additional information.

Sue Oliver updated the group on the Summit Ridge Wind Project located in Wasco County. The application has been received and ODOE has issued two requests for additional information. ODOE staff are reviewing Summit Ridge's response to the second request and they anticipate a complete application for public comment within a month.

Sue then spoke about the Carty Generating Station, the Portland General Electric gas fired power plant proposed for location adjacent to the coal plant. The application has been received and a request for additional information has been sent to PGE. A response from PGE was expected today but they have asked for a two week extension.

The Boardman to Hemingway Transmission Line (B2H) project is moving forward. They plan to have joint scoping meetings with DOM who is the lead federal agency on the project. The meetings are tentatively scheduled for late July or early August. Meanwhile, we will be resolving some federal registry issues.

Oliver did not attend the PUC hearing on the need for the facility and a review on the Integrated Resource Plan held in Baker City a few weeks ago; however, stopped by the “Move Idaho Power” meeting—nice job on public testimony to the PUC. The PUC is scheduled to make a decision on the IRP in August. ODOE is continuing to move forward with a joint federal state process and will wait to see what the PUC comes up with in August.

ODOE could receive an NOI on the Cascade Crossing Transmission Line project within the next probably 45 days. ODOE is collaborating with the US Forest Service which is the lead federal agency on the Cascade Crossing project. Joint scoping meetings are planned, which will address the Council's public meeting

requirement with a Notice of Intent and the Federal requirement for having scoping meetings. Although moving forward, the projects are complex; therefore, the process will take some time.

Chair Shiprack called for Public Comments.

Jed Farmer, Union resident and member of citizens group called "Friends of the Grande Ronde Valley," expressed concerns about Antelope Ridge. The project will affect essential and potentially irreplaceable habitat for multiple wildlife species. The proposed actions to mitigate the effects do not take into consideration existing information to identify and quantify the impact, nor does it adhere to OAR 635.415.0025, requiring no net loss to the benefit of habitat quantity or quality for habitat category 2. The mitigation plan does not comply with UC UPS 2409 in Union County Land Use Plan, under the OER 345.0022, which requires mitigating in favor of goal five resources in this big game and critical wildlife habitat. The mitigation plan identified the impact areas; acres removed from habitat by the physical presence of roads and actual turbines. Existing information from the adjoining Elkhorn Valley Wind Farm, Oil and Gas Energy Projects studies, identify the environmental impact to encompass one to three miles around the actual physical footprint. The mitigation plan submitted seriously ignores the applicable studies and underestimates the extent of impact as inadequately proposing mitigation alternatives.

Farmer: The mitigation plan consists of the creation of an ATF fund, a habitat fund. The proposed funding, the dollar funding, is based on the physical footprint, rather than the zone of impact and consequently is underfunded. The ATF proposes individual projects for landowners within the project boundaries that rely on voluntary compliance with no regulatory enforcement authority. The ATF requires a subjective evaluation to establish non-compliance and then after a non-specified period of negotiation with the landowner, halts their receipt of funds and then finds another landowner to take their place in mitigation.

Farmer: The identification of potential other landowners, or replacement with respect to location, proximity and habitat willing to participate is lacking in the plan. The mitigation plan proposes to use County and/or State personnel to implement, monitor and maintain the plan without identifying the required staffing, qualifications, support systems, availability and associated costs over time. The failure of the impact mitigation plan to address the magnitude of impact as well as proposing a seriously flawed execution plan will result in significant detrimental impact to the Goal Five resource. The only acceptable alternatives to the plan are either to deny its applications, or require relocation to an area outside the big game habitat.

Farmer: This one refers to the location of the turbine strength on the northend of Rainbow Flat. The Elkhorn Valley Wind Project also proposed turbine strength in the same area. Those were removed at the request of the Oregon Department of Fish and Wildlife, to mitigate the impact on the wildlife habitat, big game and the safe grounds. The rise and neglect of the recommended macro siting phase in the siting guidelines, as well as the previous mitigation with the Elkhorn Valley Wind Project, and the recommended void for category 1, 2 and 3 wildlife habitats with the Antelope Ridge project siting application.

The Rainbow Flat area is designated as a multiple biological value (MBV) zone because of the presence of critical wildlife habitat and the presence of both big game and several threatened or sensitive species. ODF has presented alternative siting locations to Horizon, but have not been considered at this point. The Antelope Ridge Mitigation Plan identified 112 acres of forest land that would be permanently removed from Craig Mountain to accommodate the project. The US Fish and Wildlife Services, ODF and WF have recommended avoiding these areas, due to the critical habitat, presence of sensitive species and high sub-migratory birds and bird diversity.

The US Fish and Wildlife recommends the areas to be documented as category 1 or 2 habitat. OAR 660.006.0025 states "a power generation facility shall not preclude more than 10 acres from the use of a

commercial forest.” Operational exception is taken pursuant to OER 660.8004. Both the HEF and Union County responses to the application only consider the actual footprint of the power pulls, roads and disturbing paths. The first forest will be intact well outside these boundaries. It is well documented that forestry practices that open corridors would result in extensive damage and mortality to bordering trees.

The proposed Antelope Ridge Project contains two very significant areas that will present severe hazards to both migratory and resident avian and bat populations. The placement of the turbine strength on both east and west side of Piles Canyon will be in the flyway connecting the Grande Ronde Valley, including the landmarks Red butte with Baker Valley in Baker County. The presence of the Land Marsh Refuge in Union County and the wet lands associated with the Powder River in Baker County attracting concentrates of both threatened and sensitive migratory species, in addition to the many other migratory and resident avian and bat populations.

The frequent adverse weather conditions in the fall, winter and spring seasons create severe periods of dense fog in the project area, during the primary migratory period for bird and populations. The attached photos show the typical dense fog that develops on top of Craig Mountain, spills over the North base where the turbine strength will be obscured from view in the flight paths of the birds and bat populations.

Charles Gillis, La Grande Oregon, is also a member of the Friends of La Grande Ronde Valley. He was extremely interested to hear about the FAA concerns with the Fossil site. The airport in La Grande is a major firefighting airplane conduit in the summer and air planes fly in and out all summer. Mr. Gillis guessed that the airport was about 10 to 15 miles from the proposed Antelope Ridge site and suspects there will be some concerns addressed about that in the future.

Mr. Gillis addressed that he would like to request that EFSC/the Council expand their statutory reach to include issues of view shed and property values. Mr. Gillis went on a walking tour of Union to get a sense of what the community at large felt about Antelope. Most people said that they were concerned about the view shed and/or their property values, which is not addressed in the statutory areas permitted in siting.

Mr. Gillis shared that constituents felt concerns were not being addressed. He argued that Council’s rules and the siting opinions did not accurately reflect the honest concerns of the people. He mentioned that Mayor Lindsley had said that the visual impact was 200 degrees around the town of Union. He encouraged the Council to “get out there and take a look.”

The strategic investment plan is a consideration between the County Commissioners and Horizon project. If it was granted it would provide Horizon energy with considerable tax benefit. The criterion which permits the SIP to be granted, a major point is job creation. Mr. Gillis argued that there was no real job creation benefit from Antelope Ridge. Comparatively the Elk Mountain adjacent to Antelope Ridge only created two long term jobs.

Mr. Gillis emailed David Nelson, Senator for the area. He stated that Senator Nelson specifically said that he was against further expansion of wind farms in Eastern Oregon.

The council meeting was adjourned at 2:30 pm.