



Oregon

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July 24, 2008



TO: Land Conservation and Development Commission
FROM: Richard Whitman, Director
SUBJECT: **Agenda Item 7, August 6-8, 2008 LCDC Meeting**

Request to Initiate Rulemaking and Convene a Work Group Regarding Wind Power Generation Facilities on Agricultural Land

I. AGENDA ITEM SUMMARY

This item is a report to the Commission regarding a proposed work group to consider amendments to OAR 660, division 33 (Agricultural Lands rule) to address the provision for wind power generation facilities on agricultural lands.

This report discusses need, issues and proposed timelines, and recommends appointment of an advisory workgroup and Commission liaison to guide the project.

For additional information, please contact Katherine Daniels, Farm and Forest Lands Specialist; Doug White, Community Services Specialist; or Jon Jinings, Eastern Oregon Regional Representative. Katherine can be reached at 503-373-0050, ext. 247, or at katherine.daniels@state.or.us. Doug can be reached at 541-318-8193 or at doug.white@state.or.us, and Jon can be reached at 541-318-2890 or at jon.jinings@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION:

The department recommends the Commission initiate rulemaking to convene a work group to discuss issues and recommend amendments to OAR 660, division 33 that will be directly applicable to proposals seeking approval of wind power generation facilities on agricultural lands.

III. BACKGROUND

Siting commercial electric generation facilities can be a complex process that often involves responding to multiple federal, state and local programs and requirements.

Larger generation facilities, including wind generation facilities with an average electric generating capacity of 35 megawatts or more, are subject to the siting jurisdiction of the Oregon Energy Facility Siting Council (EFSC). EFSC's general standards for siting energy facilities are included at OAR Chapter 345, division 22, and require a finding that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC). Pursuant to ORS 469.504 and OAR 345-022-0030(2), an applicant may elect to satisfy LCDC's land use requirements by obtaining a local land use approval from the affected government, or by obtaining a determination from EFSC.

A land use decision to approve or deny a commercial power facility made by a local government may be appealed to the Land Use Board of Appeals following the ordinary process. A determination by EFSC that a proposal does or does not comply with the relevant land use statutes, goals and rules may be appealed to the Oregon Supreme Court.

State land use statutes (ORS 215) authorize land use approval of "commercial utility facilities for the purpose of generation power for public use by sale" as a conditional use on agricultural lands. In addition to any applicable local provisions, the statute requires the decision makers to determine that a proposed facility would not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm and forest use.

LCDC's administrative rule for uses of agricultural land – OAR Chapter 660, division 33 – supplements state statutes by requiring that an exception be taken if a power generation facility will preclude 12 acres or more of high-value farmland, or 20 acres or more of non high-value farmland, from use as a commercial agricultural enterprise (see OAR 660-033-0130(17) and (22), Attachment B). At the time this rule was adopted, the acreage limits were designed for the typical size of natural gas fired power plants. Little or no consideration was given to wind facilities or their effects on farm uses.

Wind power projects generally include a series of towers with turbines, often referred to as a "string," spaced along a ridge or other location where wind speeds are sufficiently strong and consistent enough to produce commercial amounts of power. Rather than occupy a single large footprint, land utilized by a string consists of tower pedestals typically placed on the edge or corners of fields, and a connecting roadway. In other words, lands occupied by a wind power project resemble a ribbon rather than a block.

For many years wind power projects were considered economically unfeasible in Oregon. However, advancements in technology combined with other factors have made wind power a viable alternative to other energy sources in the state. In recent years smaller wind power projects typically have been approved through the local land use process as a

conditional use, while large projects often require an exception due to the acreage limitations in the LCDC rule. Most of the state's wind power projects have been approved in eastern Oregon, and all, or nearly all, of those projects have been sited on agricultural land. Attachment C is an example energy facility siting ordinance from Wasco County.

One question regularly encountered during the review a of a wind power project is whether the road connecting the string of towers should be counted towards the amount of acreage used by the facility under OAR 660-033-0130(17) & (22). Other issues and policy questions commonly encountered by local governments include possible impacts to wildlife, impacts on local residential or other existing land uses, and conflicts with farm or ranch activities.

IV. RECOMMENDATION

The department believes that the commission's existing rules were established to discourage the siting of conventional gas and coal power generating facilities with large consolidated acreage requirements on agricultural lands, except in limited circumstances where an exception to statewide planning goal 3 is justified. The applicable provisions of OAR Chapter 660, division 33, do not appear to anticipate the development of wind energy sources. A limited rulemaking effort to provide additional clarification and guidance on this subject would benefit future applicants and decision makers, as well as citizens, farmers, and others affected by wind power decisions.

Timeline: A small informal group met once on this topic in early June. Staff recommends that LCDC approve work group members and initiate rule amendments at its August 6–8 meeting in Baker City. This would then be followed by three to four work group meetings and proposed administrative rule changes by October 2008. This is expected to be a relatively quick and simple rulemaking.

Citizen Involvement: The procedures for public involvement under the Commission's "Citizen Involvement Guidelines for Policy Development" will be followed in this process (Attachment D). This includes: (1) consultation with the Citizen Involvement Advisory Committee (CIAC) throughout the process; (2) establishing and publicizing a schedule of work group meetings and LCDC meetings to provide opportunities for citizen participation; (3) having rulemaking information available in paper form and available on the agency's website; and (4) providing opportunities for citizens to comment directly to the department and Commission. The procedures for citizen involvement will be utilized when the workgroup meets and when the Commission engages the public in the rule amendment process.

A mailing list is being created by the department to provide information and to notify interested persons of workgroup and Commission hearings. Information will be available on the agency's website. Persons with questions about this rule amendment process

should contact Katherine Daniels, Doug White or Jon Jinings. Persons interested in being included on the mailing list should contact Bryan Gonzalez, at 503-373-0050, ext. 322, or by e-mail at bryan.gonzalez@state.or.us.

Workgroup: The department recommends the Commission appoint the following to serve on the Wind Farm Workgroup:

Hanley Jenkins, LCDC Liaison (Workgroup Chair)
Susie Anderson, Gilliam County
Todd Cornett, Wasco County
Jim Johnson, Oregon Department of Agriculture
Rose Owens, Oregon Department of Fish and Wildlife
_____, Oregon Department of Energy
_____, farmer
_____, wind industry representative

Missing names will be supplied prior to or at the Commission meeting to consider this item.

Proposed Motion:

I move that the Commission appoint a workgroup to consider and propose amendments, as appropriate, to OAR 660, division 33 (Agricultural Lands), regarding the siting of wind power generation facilities on agricultural lands.

ATTACHMENTS

- A. EFSC rules – OAR Chapter 345, division 22
- B. Current statute (ORS 215) and administrative rules related to the siting of wind power generation facilities on agricultural land
- C. Wasco County's Energy Facility Siting ordinance
- D. LCDC's Citizen Involvement Guidelines for Policy Development

DEPARTMENT OF ENERGY, ENERGY FACILITY SITING COUNCIL

DIVISION 22

GENERAL STANDARDS FOR SITING FACILITIES

345-022-0000

General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to the protected resources. The applicant has the burden to show that the overall public benefits outweigh the damage to the resources, and the burden increases

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proportionately with the degree of damage to the resources. The Council shall weigh overall public benefits and damage to the resources as follows:

(a) The Council shall evaluate the damage to the resources by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource that would be affected;

(B) The degree to which current or future development may damage the resource, if the proposed facility is not built;

(C) Proposed measures to reduce the damage by avoidance of impacts;

(D) The magnitude of the anticipated damage to the resource, taking into account any proposed mitigation.

(b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

(A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;

(B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;

(C) Recommendations from any special advisory group designated by the Council under ORS 469.480;

(D) Evidence that the benefits are likely to occur only if the proposed facility is built;

(E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, division 23, except that the Council shall not find that need for a facility is sufficient, by itself, to outweigh damage to resources affected by the proposed facility.

(3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:

(a) The organizational expertise standard described in OAR 345-022-0010;

(b) The land use standard described in OAR 345-022-0030;

(c) The retirement and financial assurance standard described in OAR 345-022-0050;

(d) The need standards described in OAR 345-023-0005;

(e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720; or

(f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501, 469.503, 469.504 & 469.505

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80 ; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0080, 345-080-0075, 345-100-0052, 345-011-0055, 345-115-0052 & 345-125-0070(8); EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0010

Organizational Expertise

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0125, 345-080-0080, 345-100-0053, 345-111-0060, 345-115-0053 & 345-125-0090; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02

345-022-0020

Structural Standard

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0060, 345-100-0040, 345-111-0035; 345-115-0040 & 345-125-0070; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0022

Soil Protection

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0030

Land Use

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

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(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) 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.

(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.504

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-080-0065, 345-100-0045, 345-111-0045, 345-115-0045, 345-125-0070 & 345-125-0080; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03

345-022-0040

Protected Areas

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

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(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria

Mid-Columbia Agriculture Research and Extension Center, Hood River

Agriculture Research and Extension Center, Hermiston

Columbia Basin Agriculture Research Center, Pendleton

Columbia Basin Agriculture Research Center, Moro

North Willamette Research and Extension Center, Aurora

East Oregon Agriculture Research Center, Union

Malheur Experiment Station, Ontario

Eastern Oregon Agriculture Research Center, Burns

Eastern Oregon Agriculture Research Center, Squaw Butte

Central Oregon Experiment Station, Madras

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Central Oregon Experiment Station, Powell Butte

Central Oregon Experiment Station, Redmond

Central Station, Corvallis

Coastal Oregon Marine Experiment Station, Newport

Southern Oregon Experiment Station, Medford

Klamath Experiment Station, Klamath Falls;

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0030, 345-080-0060,

345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0050

Retirement and Financial Assurance

To issue a site certificate, the Council must find that:

- (1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.
- (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0130, 345-080-0085, 345-100-0054, 345-111-0065, 345-115-0054 & 345-125-0095; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02

345-022-0060

Fish and Wildlife Habitat

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000..

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-026-0045, 345-080-0060, 345-100-0040, 345-115-0040 & 345-

125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0070

Threatened and Endangered Species

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0075, 345-079-0085, 345-80-0060(6), 345-100-0040, 345-111-035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0080

Scenic Resources

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0065; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0090

Historic, Cultural and Archaeological Resources

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-026-0135, 345-079-0095, 345-080-0060(7), 345-111-0050, 345-115-0051 & 345-125-0072; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

345-022-0100

Recreation

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;
- (b) The degree of demand;
- (c) Outstanding or unusual qualities;
- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02

345-022-0110

Public Services

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0135, 345-080-0070, 345-100-0050, 345-111-0070, 345-115-0050 & 345-125-0085; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02

345-022-0120

Waste Minimization

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

ATTACHMENT A

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-111-0040; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

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Current Law and Rules Related to the Siting of Wind Power Generation Facilities on Agricultural Lands

A wind power generation facility is a use authorized on land zoned for exclusive farm use under the heading of commercial utility facility.

OAR 215.213(2)(g) and 215.283(2)(g) provide that the following use may be established in any area zoned for exclusive farm subject to ORS 215.296:¹

“Commercial utility facilities for the purpose of generating power for public use by sale.”

OAR 660, division 33 allows commercial utility facilities for the purpose of generating power for public use by sale on both high-value (HV) and on all other farm land (Other) subject to review by the county. On HV farm land, the use is subject to the approval standards in OAR 660-033-0120(5), and subsection (17), which states:

“A power generation facility shall not preclude more than 12 acres as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, division 4.”

On Other farm land, the use is subject to the approval standards in OAR 660-033-0120(5), and subsection 22), which states:

“A power generation facility shall not preclude more than 20 acres as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR 660, division 4.”

¹ ORS 215.296 includes the standards for approval of uses allowed under ORS 215.213(2) and 215.283(2).

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ATTACHMENT C

CHAPTER 19 STANDARDS FOR ENERGY FACILITIES
AND COMMERCIAL ENERGY FACILITIES

SECTION 19.005 Purposes

This chapter describes how to apply for county approval of a proposed hydroelectric, wind energy, biomass, or geothermal facility with a nominal rated electric capacity of 25 MW or less, or transmission facilities carrying 230 kV or less. It also describes how the county will consider the energy, environmental, economic, and social consequences of a proposed energy facility. A use approved by the county under this chapter will protect the public health, safety, and general welfare, comply with the Statewide Planning Goals and Guidelines, and comply with the Wasco County Comprehensive Plan.

SECTION 19.010 Classification of Energy Facilities

- A. Permitted Subject to Standards. A proposed energy facility shall be approved by the Planning Director as a use permitted subject to standards if the proposed facility complies with the applicable standards of subsection 19.030 (A) through (C) and section 19.040, subject to the applicable conditions of section 19.050.
- B. Conditional Use. A proposed energy facility that is not permitted subject to standards may be approved by the Planning Commission as a conditional use if the proposed facility complies with the applicable standards of subsection 19.030 (D) through (F) and section 19.040, subject to the conditions of section 19.050 and other conditions found necessary to fulfill the purpose of this chapter.

SECTION 19.020 Other Energy Facilities

Energy facilities and commercial energy facilities other than hydroelectric, wind energy, and transmission facilities are subject to the provisions of Chapter 5.

SECTION 19.030 Standards for Approval

- A. A Hydroelectric Facility as a Use Permitted Subject to Standards. A proposed hydroelectric facility is a use permitted subject to standards if it complies with part 19.030 (A)(1) and with part (A)(2), or part (A)(3) below, and the applicable conditions of Section 19.050.
1. Location. The facility shall comply with subsection 19.040(A) through (D).

2. Capacity and Source of Water. The facility will comply with either subpart 19.030(A)(2)(a) or (b).
 - a. The facility will produce 100 theoretical horsepower (thp) or less, or
 - b. The facility takes water from and returns water to a man-made water conveyance system, without increasing the system's use of surface and ground waters.
 3. Other Small Scale Facilities. A facility other than one in part 19.030(A)(2) with a maximum generating capacity of 5 megawatts (MW) shall comply with all of the following:
 - a. Does not increase the maximum surface area of an impoundment at an existing dam or diversion or does not impound more than two acre feet at a new impoundment or diversion.
 - b. Does not change the prevailing regime of storage and release or impede fish management. Changes which improve fish management or existing adverse effects of the dam or diversion may be permitted.
 - c. Does not require development of more than one mile of new vehicular access routes.
 - d. Does not require construction of a transmission line in a new right-of-way or easement that results in clearing of a right-of-way or easement with a length exceeding one mile or with an average cleared width exceeding 50 feet in the zone.
 - e. Does not use a diversion or intake structure the height of which is more than twice the diameter of the penstock or ten feet, whichever is less.
 - f. Does not increase naturally-occurring head by more than five percent.
- B. A Transmission Facility as a use Permitted Subject to Standards. A transmission facility is a use permitted subject to standards if it complies with part 19.030(B)(1) or with parts (B)(2) and (B)(3), and the applicable conditions of section 19.050.
1. Location and Height.
 - a. The facility shall comply with subsections 19.040(B) and (C), and
 - b. The facility shall result in clearing of a right-of-way or easement with an average width not greater than 50 feet in the F-F and F-1 zones, or

- c. The facility shall not increase the extent to which the right-of-way or easement is in an area listed in parts 19.040(A)(1) through (3), except as permitted by part 19.040(A)(4).
 - d. The facility is 200 feet or greater in height. (added 2-89)
2. Existing Use. The facility shall be built in or adjoining an existing public road or utility right-of-way or easement, and
 3. Width. The facility will not increase the average width of the clearing for the existing right-of-way or easement by more than 50% nor result in clearing of a right-of-way or easement with an average width greater than 125 feet, whichever is less, and
- C. A Wind Facility as a Use Permitted Subject to Standards. A proposed wind facility is a use permitted subject to standards if it complies with parts 19.030(C)(1) through (8). A wind measurement device is a use permitted subject to standards if it complies with subpart 19.030(C)(3)(b) and parts (C)(5), (C)(7) and (C)(8). In addition, a WECS and a wind measurement device are subject to the standards of subsection 19.040(A) through (C) and the applicable conditions of section 19.050.
1. WECS Height. The total WECS shall not exceed 200 feet.
 2. Density. No more than two WECS shall be on the same site and under the same ownership or management.
 3. Setbacks.
 - a. A WECS shall be setback from all adjoining property lines as described in (1) and (2) below. An easement that complies with ORS 105.900 through .915 may be substituted for required setbacks. The setback shall be measured from the center point of the tower or pedestal.
 1. A horizontal axis WECS shall be setback at least five rotor diameters.
 2. A vertical WECS shall be setback the total WECS height.
 - b. The furthest horizontal extension of a WECS or wind measurement device (including guy wires) shall not extend into yards required in the underlying zones or be closer than twelve feet to any major structure, or right-of-way or easement for above-ground telephone, electrical transmission and distribution lines.
 4. Minimum Height. The lowest point in the sweep of a WECS blade shall be a minimum height above the tallest current or foreseeable obstruction within a horizontal, 500 foot radius of a WECS or a radius of 10 rotor diameters (for

horizontal axis) and 5 WECS heights (for vertical axis), whichever is greater, as described in (a), (b), and (c) below. The radius shall be measured from the center point of the tower.

- a. At least 30 feet for a horizontal axis WECS on a site without site-specific wind direction data or representative off-site data.
 - b. At least 30 feet above current or foreseeable obstructions within 45 degrees of the direction(s) of prevailing wind for a horizontal axis WECS on a site with site-specific wind direction data or representative off-site data.
 - c. At least six feet for a vertical axis WECS.
5. Public Access. Public access to a vertical axis WECS shall be limited using (c) below. Public access to a horizontal axis WECS shall be limited using one or a combination of the following methods:
- a. Removal of tower climbing fixtures to 12 feet from the ground,
 - b. Installation of a locking, anti-climb device on the tower, or
 - c. Installation of a protective fence at least six feet tall with a locking gate.
6. Visual Effects. Except when the applicant demonstrates that such measures will significantly interfere with wind access over the life of the WECS, a WECS shall be sited to reduce visual impacts using means including, but not limited to, the following:
- a. Setting the WECS against a visual backdrop that, because of color, texture or topography, helps the WECS blend into its surrounding environment.
 - b. Using non-reflective materials and colors that blend into the background unless otherwise required by the Federal Aviation Administration or Oregon State Aeronautics Division.
 - c. No advertising shall be placed on the WECS. Advertising does not include the manufacturer's label or other signs required by law.
 - d. Setting the WECS back from scenic highways and zones containing any of the protected areas listed in subsections 19.040(A) and (B).
7. Notice. The following signs shall be clearly visible on the WECS tower and accessory facilities.

- a. "No Trespassing" signs shall be attached to any perimeter fence.
 - b. "Danger" signs shall be posted at the height of five feet on WECS towers and accessory structures.
 - c. A sign shall be posted on the tower showing an emergency telephone number.
 - d. The manual electrical and/or overspeed shutdown disconnect switch(es) shall be clearly labeled.
8. Guy Wires. All guy wires shall be sheathed in a bright orange or yellow covering from three to eight feet above the ground.
- D. Conditional Use Standards for a Hydroelectric Facility. A hydroelectric facility shall be approved if it complies with the following standards and section 19.040, subject to the conditions of section 19.050.
1. Fish, Wildlife, and Plant Resources. The facility shall not have a significant adverse effect on endangered or threatened fish, wildlife, or plant species or their critical habitats or on other significant habitats identified in the comprehensive plan.
 2. Visual Effects. The facility considers visual effects by means including, but not limited to, the following.
 - a. Using materials and colors that blend with the background.
 - b. Setting development back from the edge of public arterial rights-of-way, viewpoints, and other significant visual resources identified in the comprehensive plan, and setting accessory facilities back from Class I and II streams.
 - c. Retaining or planting vegetation to obscure views of the development from significant viewpoints identified in the comprehensive plan.
 3. Water Use. Use of water for the facility is not detrimental to the public interest or contrary to the achievement of an integrated, coordinated program for water management. A Water Resources Department or Water Policy Review Board decision to grant or approve use of the amount of water proposed for the use shall be conclusive proof that the facility complies with this standard, unless the approval has expired.
- E. Conditional Use Standards for a Transmission Facility. A transmission facility shall be approved if it complies with the following standards and section 19.040, subject to the conditions of section 19.050.

1. Use of Existing Routes. The development uses available developed or approved road and utility rights-of-way or easements that can accommodate the proposed facility. New routes are permitted if more adverse energy, environment, economic, and social consequences would result from using an existing route than development of other rights-of-way or easements.
 2. Visual Effects. The facility considers visual effects by means including but not limited to the following.
 - a. Avoiding ridgelines, scenic areas, unique or significant views and vistas, hilltops, or other high or visually prominent areas.
 - b. Building the facilities near the edge of contiguous timber areas or in swales, dips, and depressions that provide a backdrop for or obscure the facility to the extent these features are available between the ends of the facility.
 - c. Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or Oregon State Aeronautics Division.
 - d. Setting development back from the edge of public arterial rights-of-way, Class I and II streams, viewpoints, and other significant visual resources identified in the comprehensive plan and retaining or planting vegetation to obscure views of the development from those areas.
 3. In-Stream Towers. A transmission tower may be permitted in a Class I or II stream if it complies with (a) and (b) below.
 - a. Adjoining towers and conductors cannot safely and economically support the transmission line(s) that span the stream without an in-stream tower.
 - b. The transmission line cannot be safely and economically placed under the water or streambed.
- F. Conditional Use Standards for Wind Facilities. A wind energy conversion system (WECS) shall be approved if it complies with parts 19.030(C)(6), (C)(7), (C)(8) and the standards in (F)(1) through (6) below. In addition, a WECS is subject to the standards in section 19.040 and the applicable conditions of section 19.050.
1. Setbacks. WECS shall comply with subparts (a), (b) and (c) below.
 - a. WECS shall comply with the requirements of subparts 19.030(C)(3)(a) and (b).

- b. A WECS tower or pedestal shall be setback as described in (1) and (2) below from the edge of a public arterial right-of-way and property lines of downwind lots. An easement that complies with ORS 105.900 through .915 may be substituted for required setbacks. The setback shall be measured from the center point of the tower or pedestal.
 - (1) A horizontal axis WECS shall be setback at least five rotor diameters or 100 feet, whichever is greater.
 - (2) A vertical axis WECS shall be setback at least the total WECS height.
- c. A WECS shall be set back from lots in residential zones and significant visual resources identified in the comprehensive plan one quarter mile or as described in (1) and (2) below, whichever is less.
 - (1) At least 20 rotor diameters for a horizontal axis WECS.
 - (2) At least 10 WECS heights for a vertical axis WECS.

2. Minimum Height.

- a. A horizontal axis WECS shall comply with subpart 19.030(C)(4)(b). However, a WECS in a windfarm is not an obstruction to other WECS on-site.
- b. A vertical axis WECS shall comply with subpart (D)(3)(d)(3).

3. Public Access. Public access to WECS shall be limited using one or a combination of the methods contained in section 19.030(C)(5) and a protective fence at least six feet tall enclosing the site.
4. Wind Resources. The site shall have site-specific data documenting wind speed and direction or off-site data from within the same topoclimatological zone as the proposed site.
5. Fish, Wildlife, and Plant Resources. The facility shall not have a significant adverse effect on endangered species or their critical habitats or on other significant habitats identified in the comprehensive plans.
6. Bonding. An applicant who is not the owner of the proposed site shall post a bond or an alternative acceptable to the county which is sufficient to guarantee removal and disposal of the wind farm components and restoration of the land in case of noncompliance with the provisions of the ordinance.

SECTION 19.040 Additional Approval Standards for Energy Facilities and Commercial Energy Facilities

A. Protected Areas. An energy facility may not be sited in the areas listed in part 19.040(A)(1) through (3) unless the facility complies with part (A)(4) below.

1. National parks, national monuments, national wildlife refuges, BLM Outstanding Natural Areas, BLM Areas of Critical Environmental Concern, Federal Research Natural Areas, U.S. Forest Service Special Interest Areas, Wilderness areas under the Federal Wilderness Act and areas recommended for designation as wilderness areas pursuant to section 603 of the Federal Land Policy Management Act of 1976, Federally designated Wild and Scenic Rivers or any rivers recommended for designation by the National Park Service.
2. State of Oregon parks, waysides, refuges, wildlife management areas, and natural area preserves, scenic waterways and adjacent lands designated pursuant to ORS 309.845, wild fish streams designated by the Oregon Department of Fish and Wildlife, and experimental areas established by the Rangeland Resources Programs, School of Agricultural, OSU.
3. Areas which the comprehensive plan designates as not suitable for a given type and size of energy facility, because the area contains significant open space, mineral resources, fish and wildlife habitat, scenic views and sites, waterbodies, wilderness, cultural, geologic, historic, botanical, research, or recreational resources that cannot be protected from the adverse consequences of the facility.
4. Exceptions. An energy facility may be permitted in an area listed in parts 19.040(A)(1) through (3) above if it complies with at least one of the following exceptions, and it will be compatible with adjacent uses and resources. However, a hydroelectric dam or diversion is not permitted in a scenic waterway or adjacent lands designated pursuant to ORS 390.825.
 - a. Accessory Use. A proposed energy facility is accessory to a permitted use.
 - b. Authority Granted by Management. The public agency responsible for designation or management of a protected area in which an energy facility is proposed has authorized the application or approved the proposed facility. However, this is not an exception for areas listed in part 19.040 (A)(3).
 - c. Substantially Equivalent Substitute. The applicant provides resources equal or better in quantity and quality to those adversely affected by the energy facility.
 - d. Comprehensive Plan Designation. The comprehensive plan designates the site for an energy facility of the scale and type proposed.

- B. Conditionally Protected Areas. An energy facility or commercial energy facility in an area which the comprehensive plan designates as conditionally suitable for the scale and type of facility proposed shall comply with the conditions provided for the facility in the comprehensive plan.
- C. F-1 Zone. A transmission facility that results in a clearing with an average width greater than 50 feet, a hydroelectric facility on a site where the average slope of the land within 200 feet of the edge of the project area exceeds 20 percent or uses an impoundment containing not more than 1000 acre feet, and a wind facility on a site which occupies not more than 50 acres on land zoned F-1 shall comply with parts 19.040(C)(1) through (4), except a facility that is accessory to a permitted use.
1. The facility is sited on land that is generally unsuited for forest use, or use of predominant forest areas is warranted for the safe, economical, and efficient operation of the facility;
 2. Will not significantly affect forest uses on the site or surrounding land;
 3. Will not alter the stability of the land use pattern in the area; and
 4. Will be consistent with forest policies of the comprehensive plan.
- D. Compliance with the Comprehensive Plan. The facility shall comply with the applicable policies of the comprehensive plan.

SECTION 19.050 Conditions of Approval

Approval of an energy facility shall be subject to the following conditions. In addition, the approval authority may require an energy facility that is approved as a conditional use to comply with other conditions as necessary to fulfill the purpose of this chapter.

A. Coordination

1. Continuing Notice. The applicant shall provide the county with a copy of all applications for, or notices of, state or federal permits, licenses, exemptions, or variances in conjunction with the construction and licensing of the facility and proposed significant changes to the facility. The applicant shall make a good faith effort to provide the copy at the earliest possible time.
2. State and Federal Authority. The applicant should demonstrate that all necessary state and federal permits, licenses, exemptions, variances, or authority are approved before initiating construction of the facility.

3. Other Terms & Conditions. The terms and conditions of the following authorities satisfy substantially similar standards and conditions of this chapter and supersede inconsistent county conditions.
 - a. A dredge and fill permit is granted by the Division of State Lands under ORS 541.615;
 - b. The proposed action is a forest operation that complies with the Forest Practices Act under ORS 526 - 527 and the Rules of Forest Practices;
 - c. Written approval of development within the Oregon Scenic Waterways System is granted by the Department of Transportation under ORS 390.800, the Energy Facility Siting Council under ORS 469.430-469.570, or the Water Resources Department under ORS 537.130 through 537.450;
 - d. Written approval of the Department of Environmental Quality when air or water quality discharge permits, exemptions, or variances are granted; or
 - e. The facility complies with substantially similar standards of the special districts listed in section (F)(4) below.
 4. Consistency with Service Districts and Special Purpose Agencies. The development shall comply with the hazardous or solid waste, flood, surface, or groundwater, soil conservation, or resource management program(s) adopted by the appropriate emergency management authority, drainage district, soil conservation agency, or resource management agency(ies).
- B. Environmental Protection Overlay Districts. An energy facility or commercial energy facility in the following overlay, combining, or floating districts shall comply with applicable terms of those districts:
1. The Flood Hazard Overlay district,
 2. The Geologic Hazard Overlay district,
 3. The Mineral Resources Overlay district,
 4. The Cultural, Historic and Archaeological Overlay district,
 5. The Sensitive Wildlife Habitat district,
 6. The Columbia Gorge Overlay district,
 7. The Airport Impact Overlay district, and

8. The Natural Areas Overlay district.

C. Protection of Water Quality.

1. The development shall comply with the water quality standards for dissolved oxygen and temperature adopted by the Oregon Environmental Quality Commission (EQC) and codified in OAR 340-41 and shall not increase turbidity. Water quality effects of forest operations shall comply with the Oregon Rules for Forest Practices (ORFP) and the Forest Practices Act.
2. To the extent not inconsistent with EQC and ORFP rules, the Planning Director may allow these standards to be exceeded for a specified short time when necessary to accommodate essential construction, emergency, or other permitted uses and actions.

D. Protection of Water Bodies and Wetlands. The development will incorporate mitigation and conditions to protect Class I and Class II streams and wetlands and the banks and vegetation along those streams and wetlands affected.

E. Soil Protection. Development shall not cause a significant increase in erosion or sedimentation based on the topography, use and soil classification of the site and access to it. Practices to reduce or avoid erosion and sedimentation include but are not limited to the following.

1. Structures and access avoid areas of steep slopes where high cuts and fills are required and shall use natural contours.
2. The smallest practical area of land is to be exposed for the shortest practical time during development.
3. Measures are used such as seeding and sodding, temporary use of straw or fabric cover, aggregate cover, diversions authorized by state permit, sediment basins, and filters.

F. Health and Safety.

1. Drinking Water. No water sources shall be used for consumption unless approved in writing by the Oregon State Health Division.
2. Toilets. Field toilets approved by the county sanitarian or Oregon Department of Environmental Quality shall be available at construction sites in the vicinity and upstream of Class I or Class II streams or other water supplies.

3. Grounding. All structures which may be charged with lightning shall be grounded according to the Oregon State Electrical Specialty Code.
4. Electrical Safety. Transmission lines associated with the facility shall not generate an electrical field greater than 9 kV per meter measured at grade and shall comply with the National Electrical Safety Code, based on a written decision by the Public Utility Commissioner.
5. Air Safety. Any structure that is more than 200 feet above grade or exceeds airport imaginary surfaces defined in OAR 738, shall comply with the air hazard rules of the Oregon State Aeronautics Division (OSAD) and Federal Aviation Administration (FFA), based on a written action by those agencies.
6. Communications. The proposed facility shall not unduly reduce or interfere with electromagnetic communication signals. If undue reduction or interference occurs, the applicant shall return reception levels to pre-facility levels.
7. Noise. Construction and operation of the proposed facility shall comply with the noise regulations of the Oregon Department of Environmental Quality (DEQ) in OAR 340-35, based on a written decision by DEQ. In addition, a wind farm application shall identify noise sensitive property(ies) and ambient noise levels prior to construction.
8. Public Roads. Mud and other debris from related construction, road wear from related vehicles, or facility operation shall not create a hazard on public roads and highways. Mud and debris that fall onto a county road should be removed by the applicant as soon as possible.

G. Fish and Wildlife.

1. The applicant shall consult with the Oregon Department of Fish and Wildlife (ODFW) concerning the facility and shall provide information as requested to ODFW. The development shall be subject to ODFW recommendations that are consistent with the county decision regarding the facility.
2. A transmission line sited adjacent to wetlands or water bodies identified as critical bird habitat in the comprehensive plan shall comply with (a), (b), or (c) below:
 - a. The line is lower than the level of surrounding treetops.
 - b. The line is at least 50 feet from the edge of the nearest wetland or water body.

- c. The line is separated from the nearest wetland or water body by topography or substantial vegetation, does not use static or lightning wires, does use marker balls or flags on the line, or is perpendicular to the prevailing winds.

**LAND CONSERVATION AND DEVELOPMENT COMMISSION
CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT**

Approved by LCDC on April 23, 2004

I. Purpose

The purpose of these guidelines is to provide and promote clear procedures for public involvement in the development of Commission policy on land use. The Commission values the involvement of the public and interested parties in all phases of planning, including development of Commission policy. These guidelines are intended to provide the Commission and the Department with practical guidance on public involvement during policy development, consistent with and in some cases beyond the legal requirements of the Attorney General's Model Rules of Procedure, state law, and the Commission's administrative rules.

The Commission and the Department shall follow these guidelines to the extent practicable in the development of new or amended statewide planning goals and related administrative rules, and in other significant policy development activities related to the statewide land use program.

II. Public Involvement Objectives in Development of Commission Policy

- To provide meaningful, timely, and accessible information to citizens and interested parties about policy development processes and activities of the Commission and the Department.
- To promote effective communication and working relationships among the Commission, the Department, citizens and interested parties in statewide planning issues.
- To facilitate submittal of testimony and comments to the Commission from citizens and interested parties and the response from the Commission to citizens and interested parties about issues of concern with regard to policy proposals.

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

In order to guide the Commission and the Department in planning for and conducting procedures and activities that will result in a significant new or amended statewide land use policy, such as a new or amended statewide planning goal or an administrative rule, the Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;
2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and
 5. Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.
 6. Develop a database of names of citizens interested in participating in LCDC land use policy development on general or on specific issues. The department shall maintain this database. In addition, information should be provided on the department's website to notify the public of opportunities to serve on advisory committees or workgroups."
- B. In establishing committees, workgroups, and processes for the development of new or amended goals, rules or policies, the Commission and the Department shall consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest. Depending on these considerations with respect to a particular policy issue, the Commission may:
1. Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions.
 2. Authorize the Department to establish an advisory committee that includes affected parties, technical experts and other knowledgeable individuals in order to provide advice and assistance to the Director and the Department on a particular policy issue, prepare options or alternatives, and provide advice and information on the political, practical, technical, and scientific aspects of a potential new or amended policy. Such advisory committees to the Department are referred to as "workgroups" and their meetings shall be open to the public. While these meetings are not necessarily subject to the requirements of the Open Meetings Law, the Department shall strive to comply with the provisions of that law with respect to notice and other requirements. The Department shall report to the Commission when it appoints a workgroup in order to provide an opportunity for the Commission to consider and, if necessary, amend the group;
 3. Choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.

- C. The Commission, when establishing an advisory committee, or the Department, when establishing a workgroup, shall:
1. Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
 2. Assure that Department staff provides adequate support, within the limitations noted below;
 3. Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
 4. Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup; and
 5. Consider geographic representation in appointing committees or workgroups.
 6. Provide information to members of advisory committees and workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed; (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
 7. In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal.
- D. The Commission shall encourage flexibility and innovative methods of engaging the public in its policy activities and shall seek the assistance and advice of citizens affected by or with an interest in the proposed policy issue. To this end the Commission may convene short-term technical panels or focus groups (real or virtual), hold conferences, conduct on-line surveys, and carry out other means of gathering information. Where a goal, rule or significant policy process primarily affects a certain region, and where advisory committee or workgroup meetings are confined to that region, notice and opportunities to comment shall also be made available to citizens and interested parties in other regions of the state. Where appropriate, the Commission shall consider collaborative rulemaking under ORS 183.502.
- E. The Commission is cognizant that the level of public involvement and outreach described in these guidelines will be difficult or impossible without adequate staff support from the Department, and that the scope of efforts to promote and facilitate public participation and outreach will be limited based on the adequacy of staff and funding resources.

- F. None of the activities described herein are intended to conflict with or replace any of the public notice or comment opportunities provided under state law or administrative rules.
- G. The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.

IV. Communication with Citizens**A. Understandable Information**

The Commission and the Department shall provide to citizens information that is essential to understanding the policy issues at hand and shall endeavor to make this information easily understood and readily accessible. The Commission and the Department shall identify Department staff or other experts who shall be available to answer questions and provide information to interested citizens.

B. Notice of Decisions

The Commission and the Department shall provide notice of decisions to citizens who have requested information and/or participated in the development of policy. This notice shall be by e-mail except paper mail when specifically requested. Notice shall direct citizens to the Department's website where the decision, background information, staff reports, rationale for the decision, and other information will be available.

C. Costs

Paper copies of items may be mailed upon request subject to fees that may be established by the Department to recover costs (the Commission has established copy fees under OAR 660-040-0005).

D. Appeal Information

Information on appeals procedures shall be available on the Department's website and shall be referenced, when appropriate, in notices to citizens, above.

E. Electronic Communication

While the Commission and the Department recognize that not all citizens presently have or desire direct home access to electronic communications or the agency website on the Internet, the Commission also recognizes the numerous advantages of electronic communication. The Commission is committed to using this medium as a primary means of communication and distribution of information of interest to citizens and shall encourage the Department to employ web-based communication technologies to provide a broad range of information to citizens and to facilitate communication between the Commission and citizens.

V. Applicability

These guidelines are effective April 26, 2004, and supercede the previously adopted Citizen Involvement Program adopted October 7, 1977 and Public Involvement Policy adopted May 4, 2001. The Department is directed to consult with CIAC with regard to new and ongoing projects, including advisory committees and workgroups appointed for those projects, at the earliest scheduled CIAC meetings. However, in the event the meeting schedule of those committees will not allow timely consultation on policy projects intended to begin in accordance with the schedule adopted by LCDC, the Department is directed to proceed with those projects and to consult with CIAC at the earliest opportunity.