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BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

IN THE MATTER OF THE REQUEST FOR)	
AMENDMENT #1 OF THE SITE CERTIFICATE)	ORDER APPROVING
FOR THE SOUTH MIST PIPELINE EXTENSION)	AMENDMENT #1
)	

The Energy Facility Siting Council

August 28, 2003

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**SOUTH MIST PIPELINE EXTENSION
AMENDMENT #1
FINAL ORDER**

I. INTRODUCTION

The Energy Facility Siting Council (“EFSC” or “the Council”) issues this order in accordance with ORS 469.405 and OAR 345-027-0070. This order approves a request by the certificate holder for amendment of the site certificate for the South Mist Pipeline Extension (SMPE). The certificate holder is Northwest Natural Gas (NWN).

The Council issued the site certificate for the SMPE on March 13, 2003. The Council approved a corridor 200 feet wide and approximately 62 miles long, and imposed conditions limiting the location of the pipeline and construction activities within that 200-foot corridor. NWN requests permission to use land outside the 200-foot corridor for temporary laydown area and construction access in certain locations. NWN also requests changes to its Agricultural Impact Mitigation plan and to a condition requiring separation between the SMPE and other underground structures.

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

NWN submitted a request to amend the site certificate on June 5, 2003. In accordance with OAR 345-027-0070, the Office of Energy (“Office” or “OOE”) sent copies of the request on June 9, 2003 to the agencies, local governments and tribes listed in OAR 345-020-0040. The Office requested comments by July 7, 2003. The Office sent notice of the amendment request to all persons on the Council’s mailing list, to the list submitted by NWN of property owners within 500 feet of the SMPE site, and to persons on the special mailing list set up for the SMPE project including parties to the contested case on the original site certificate. On June 17 the Office notified NWN that it intended to issue a proposed order on the amendment request on July 10, unless unexpected issues emerged during public comment. The Office issued a proposed order recommending approval, with additional conditions, on July 11, 2003.

On July 11, 2003, the Office sent the notice of the proposed order required under OAR 345-027-0070(4), stating that any person may, within 30 days after the date of the proposed order, ask the Council to hold a contested case proceeding. The notice stated that the Council would determine whether a contested case proceeding is justified. Seven people commented on the proposed order. None requested a contested case. The comments are discussed in section V of this order.

In reviewing the proposed amendment, the Council considers whether the changes to the facility comply with all Council standards (OAR 345-027-0070). The Council applies the applicable substantive land use criteria in effect on the date NWN submitted the request for amendment and all other state statutes, administrative rules and local government ordinances in effect on the date the Council makes its decision.

1 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

2
3 **A. Description of the Facility**

4 The SMPE is a 24-inch diameter natural gas transmission pipeline, approximately 62 miles
5 in length. The site of the facility is a 200-foot wide corridor. The site certificate authorizes NWN
6 to locate the pipeline anywhere within the corridor, subject to conditions. The corridor at its
7 northernmost point begins at a NWN valve station (the “Bacona Blowdown Station”) near the
8 Washington-Columbia county border. It travels south through Dairy Creek Valley, and proceeds
9 south and east along mostly rural roads and property lines just west of North Plains, Hillsboro,
10 Sherwood and Wilsonville, crossing the Willamette River at a point near Graham Road in
11 Clackamas County. South of the Willamette River the corridor proceeds south and east along rural
12 roads and property lines until its southernmost point at the Williams Company’s Molalla Gate
13 Station near the intersection of Barnards and Dryland roads.
14

15 Although the approved corridor is 200 feet wide, the Council imposed conditions limiting
16 the permanent easements that NWN can acquire to 40 feet and limiting the width of temporary
17 construction easements to 80 feet. Where the corridor in the Exclusive Farm Use (EFU) zone
18 includes public road right-of-way (RROW), the Council imposed conditions limiting permanent,
19 private easements outside the public RROW to 20 feet, and limiting temporary construction
20 easements outside the public RROW to 50 feet. Along certain roads the site certificate limits the
21 pipeline location to the public RROW.
22

23 **B. Changes to the Facility Proposed by NWN**

24 In its Application for Site Certificate (ASC), NWN stated that in some places it would need
25 temporary access and laydown area outside the 200 foot corridor, for construction purposes. The
26 Council granted temporary access and laydown use for locations that NWN described in detail in
27 the ASC. For all other temporary access and construction laydown outside the 200 foot corridor,
28 NWN must request a site certificate amendment.
29

30 Pursuant to ORS 215.275(5), the Site Certificate requires NWN to follow an approved
31 Agricultural Impact Mitigation Plan (AIMP). Pursuant to ORS 469.401(2), the Site Certificate also
32 includes conditions to protect public safety, including a condition requiring a minimum of 2 feet of
33 separation between the SMPE and other underground structures including existing NWN pipelines.
34

35 In this request for Amendment #1, NWN requests permission to:

- 36
- 37 i. Use land outside the original 200-foot corridor on 38 specific properties for construction
38 access and equipment laydown. On property owned by Clean Water Services, NWN
39 requests a permanent access easement outside the 200 foot corridor. On all other properties,
40 the access and laydown area uses are temporary.
 - 41 ii. Add an alternate method of topsoil segregation in the Agricultural Mitigation Plan, as
42 suggested by the Farm Bureaus of Washington, Clackamas and Marion counties.
 - 43 iii. Relax a requirement to maintain 2 feet of separation between the pipeline and other
44 underground structures (federal regulations requiring 12 inches of separation would continue
45 to apply), and
 - 46 iv. Widen its permanent easement within the 200 foot corridor in one location to avoid damage
47 to large trees.

- 1 v. Add “Access to the pipeline easement” to the criteria that OOE shall use in determining
2 whether to grant a request by NWN for more than 80 feet of construction easement within
3 the 200-foot approved corridor, under Mandatory Condition 7.
- 4 vi. Allow NWN to use a temporary easement for topsoil storage outside the 80-foot
5 construction easement or outside the 200-foot corridor if the landowner requests it.

7 **C. Changes to Site Certificate Proposed by NWN**

8 NWN proposed the following amendments to the site certificate. Additions are double-
9 underlined and deletions have a strikethrough.

10 Soil Protection Standard Condition 3

- 11 3) NWN shall implement the Agricultural Impact Mitigation Plan (AIMP) (October
12 2001) and all steps contained therein, except that the AIMP shall be modified: (1) to
13 require segregation of topsoil to the “A” horizon, as opposed to the 12 inches
14 described in the AIMP-, and (2) by the inclusion of an alternative method of topsoil
15 segregation described in Addendum 1 to the AIMP. As a supplement to the AIMP,
16 NWN shall implement the Post Construction Crop Monitoring Plan (PCCMP)
17 (November 2002) and all steps contained therein. The AIMP, including revisions
18 adopted by the Council, is included as Attachment D to the Final Order.

19 General Land Use Conditions

- 20 8.a. Notwithstanding Conditions 2 and 6, the permanent maintenance easements on the
21 Nordstrom and Schmidt Limited Partnership properties, on Panel 40, may be 60 feet
22 in total width, including 30 feet of private easement, where the easement areas
23 include the drip lines of an ash tree (Nordstrom property) and an oak tree (Schmidt
24 Limited Partnership property), and a permanent access easement is allowed across
25 the Clean Water Services property on Panel 14.
- 26 8.b. Notwithstanding Conditions 3, 5 and 6: (1) if a landowner requests topsoil storage
27 on the landowner’s property in a location outside the 80-foot easement width, NW
28 Natural may acquire and utilize a temporary easement covering such other location;
29 and (2) the temporary access and maintenance easements described and shown in
30 Exhibits 3, 4 and 5 to the Application for Amendment Number 1 to the Site
31 Certificate are authorized.

32 Mandatory Condition 7

- 33 7) The construction easement shall be limited to 80 feet, except where a narrower or
34 wider construction corridor is required by conditions related to individual Council
35 standards. NWN may deviate from this maximum construction easement width if
36 such deviations are authorized by the OOE. To obtain authorization from OOE for a
37 deviation in easement width, NWN must provide OOE with the following
38 information: 1) the location of the requested deviation; 2) the reason(s) for the
39 deviation and any documentation necessary to demonstrate such reasons; 3) the
40 proposed easement width; and 4) measures that NWN will implement to mitigate
41 additional impacts, if any, on resources protected by Council standards.

42
43
44 In determining whether to approve the requested deviation, OOE shall
45 provide a landowner with the opportunity to comment on the requested easement and
46 on mitigation and minimization measures. OOE shall approve the requested
47 deviation if it determines:

- 1 i. A landowner has granted a wider easement to accommodate topsoil removal and
- 2 OOE concurs that the wider easement is necessary to accommodate additional
- 3 topsoil removal;
- 4 ii. A deviation in easement width is necessary to comply with other site certificate
- 5 conditions;
- 6 iii. A deviation in easement width is required to meet federal pipeline safety standards or
- 7 OPUC or OSHA safety standards;
- 8 iv. A deviation in easement width is necessary to accommodate:
 - 9 a) Laydown and workspace areas for HDD, slick bore, prefabrication and
 - 10 pipe forming areas;
 - 11 b) Staging areas for wetland, stream and road crossings and hydrostatic
 - 12 testing withdrawal and discharge areas;
 - 13 c) Temporary construction parking and pipe and construction material
 - 14 storage; or
 - 15 d) Topsoil and subsoil storage areas for side slope or excess trench depth; or
 - 16 e) Access to the pipeline construction easements; or
- 17 v. A deviation in easement width is necessary to avoid irrigation infrastructure, existing
- 18 utilities, or other structures; and
- 19 vi. NWN will implement mitigation measures as consistent with state law and this site
- 20 certificate to mitigate or minimize any additional impacts to resources protected by
- 21 Council Standards.

22 Public Safety Condition 2(c)

- 23 2) The following specifications are deemed commitments by NWN:
 - 24 c) NWN shall maintain at least 24 inches of clearance between the pipeline and
 - 25 ~~any underground structure, including~~ the existing 16 inch line.
 - 26

27 **IV. FINDINGS ON COMPLIANCE WITH STANDARDS**

28
29 Under the General Standard of Review, OAR 345-022-0000(1), to issue the requested
30 amendment the Council must determine that it complies with:

- 31 a) standards adopted by the Council pursuant to ORS 469.501,
- 32 b) other Oregon statutes and administrative rules identified in the project order, excluding those for
- 33 which the federal government has delegated the decision on compliance to a state agency other
- 34 than the Council, and
- 35 c) statewide planning goals as provided in OAR 345-022-0030
- 36

37 The permitting requirements of state agencies other than the Council that are not federally
38 delegated and apply to the SMPE are the Limited Water License administered by the Water
39 Resources Department, and WPCF permit administered by the Department of Environmental
40 Quality and the wetlands Removal/Fill permit administered by Division of State Lands. None of
41 these is affected by the proposed amendment.

42
43 **A. Council Standards in OAR Chapter 345 Division 22**

1 **1. Organizational Expertise OAR 345-022-0010**

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

12 *(2) The Council may base its findings under section (1) on a rebuttable presumption that an*
13 *applicant has organizational, managerial and technical expertise, if the applicant has an ISO*
14 *9000 or ISO 14000 certified program and proposes to design, construct and operate the facility*
15 *according to that program.*

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

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

29
30 **Discussion**

31
32 In its Final Order on the ASC, the Council found that NWN met the Organizational
33 Expertise standard based on its previous pipeline experience, the experience of managers and
34 engineers associated with the project, and favorable regulatory history with the Oregon Public
35 Utilities Commission. The proposed amendment does not involve any change in NWN’s
36 organization or personnel. Nor does the proposed amendment alter the scope of the project in a way
37 that might require additional expertise or experience. The amendment request states:

38 *“*** The proposed amendments to the Site Certificate focus primarily on technical*
39 *constructability issues and will in no way require additional organizational, managerial or*
40 *technical expertise.”*

41 Sections (3) and (4) of the standard do not apply. The SMPE does not require any third
42 party permits because NWN will obtain all permits directly.

43 **Conclusion**

44 The proposed amendment complies with the Organization Expertise Standard. No changes

1 to conditions are required.

2 **2. Structural Standard OAR 345-022-0020**

3 To issue the amendment, the Council must find that:

4 *(a) The applicant, through appropriate site-specific study, has adequately characterized the*
5 *site as to seismic zone and expected ground motion and ground failure, taking into account*
6 *amplification, during the maximum credible and maximum probable seismic events; and*

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

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

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

17 **Discussion**

18 In its Final Order approving the SMPE, the Council found that the SMPE satisfies the
19 Structural Standard. (See Final Order, at 11-15; Attachment C, at 9-18.) The proposed
20 amendment does not change the location of the pipeline or any of the design, construction or
21 surveillance measures recommended to achieve compliance. Nothing in the proposed amendment
22 alters the basis for the Council's finding of compliance with the standard.

23 **Conclusion**

24 The proposed amendment complies with the Structural standard. No changes to conditions
25 are required.
26
27

28 **3. Soil Standard OAR 345-022-0022**

29 To issue the proposed amendment, the Council must find that

30 ****the design, construction and operation of the facility, taking into account mitigation, are not*
31 *likely to result in a significant adverse impact to soils including, but not limited to, erosion and*
32 *chemical factors such as salt deposition from cooling towers, land application of liquid effluent,*
33 *and chemical spills.*
34

35 In the ASC for the facility, NWN stated that: "Project impacts such as the use of access
36 roads, staging areas, and pipe assembly areas for horizontal directional drilling may extend beyond
37 the boundaries of the 200-foot corridors." (ASC Exhibit I at I-2.) As a result, Exhibit I described
38 soils within an additional one-half mile on each side of the Preferred Corridor, which includes all
39 construction easement areas proposed by this amendment request outside of the 200-foot corridor.

40 The Final Order and the Proposed Order concluded that NW Natural provided an extensive
41 and detailed plan for mitigating soil impacts, accounting for the major sources of soil damage such
42 as compaction, erosion, mixing of topsoil and subsoil, introduction of rock into topsoil and drain tile
43 damage. The mitigation steps described in the ASC Exhibit I, the AIMP and the Post Construction

1 Crop Monitoring Plan (“PCCMP”), which are incorporated by reference into this application for
2 amendment, are NW Natural commitments, and the Soil Protection Standard conditions in the Site
3 Certificate require compliance with these documents. As conditioned, the Council found that the
4 SMPE satisfies the Soil Protection Standard. (See Final Order at 15-18, 64; Attachment C at 31.)

5 The proposed addendum to the AIMP, shown in Exhibit 2 of the Application for
6 Amendment #1, describes an optional topsoil segregation method that would serve as an alternative
7 to the method described in Section 8a of the AIMP. Members of the Washington County Farm
8 Bureau proposed this method in discussions that occurred after issuance of the Site Certificate.

9 The optional method would be at the landowner’s request, and would call for NWN to strip
10 topsoil over an area extending laterally approximately 12 inches beyond each side of the trench
11 edge. Unlike the original AIMP, NWN would not strip topsoil from the trench spoil area but
12 instead would use a layer of organic material to separate the trench spoil and the in-place topsoil.
13 The revision lists the organic materials that NWN could use for this purpose.

14 The proposed revision in Exhibit 2 of the Amendment Application lists the advantages and
15 disadvantages of this method compared to the method in the AIMP as approved on March 13, 2003.
16 The optional method may result in some mixing of topsoil and trench spoil, mixing of organic
17 material with topsoil, loss of some perennial crop, and could tie up soil nitrogen. However, the
18 optional method would reduce the width of topsoil disturbance and reduce the need for additional
19 workspace. As noted above, the individual farmer will have the option of choosing which method
20 NWN uses. The Farm Bureau testified at the Council’s March 7, 2003 hearing that the farmer is
21 well qualified to determine what mitigation would work best for his or her farm. The Council has
22 no evidence to the contrary.

23 In its application for amendment #1, NWN made the following commitment regarding the
24 temporary easements outside the 200-foot corridor:

25 *“All of the commitments in the ASC Exhibit I, the AIMP and the PCCMP will be applied as*
26 *appropriate to the easement areas described in this application.”*

27 To make it clear that Site Certificate conditions for temporary laydown area apply to the
28 easements described in this amendment request, the Council adopts new condition (5) under
29 “Special Conditions for Temporary Laydown Area” (page 19 of the Site Certificate), clarifying
30 that the special conditions imposed on temporary laydown area apply to the easements depicted in
31 Exhibits 4 and 5 of the Application for Amendment 1.

32 **Conclusion**

33 Regarding the revision to the AIMP, the proposed revision does not eliminate a mitigation
34 technique, but provides an optional method. The choice of technique would be up to the farmer,
35 who is qualified to make that choice. The proposed revision to the AIMP is clear and objective
36 because it specifies the width and depth of topsoil stripping, lists the specific organic materials that
37 NWN can use for separation, and clearly states who will choose the method for each property. The
38 Council approves the revision to the AIMP in Exhibit 2 of the amendment request and the proposed
39 change to Soil Condition 3.
40

41 Regarding the additional easements, proposed conditions make it clear that the conditions
42 for soil restoration that apply to the site as originally approved will apply to the temporary
43 easements as well. With the foregoing condition, the proposed amendment complies with the Soil
44 Protection Standard.

1
2 **4. Land Use Standard OAR 345-0222-0030**

3
4 To issue a site certificate, the Council must find that:

5 *(1)*** the proposed facility complies with the statewide planning goals adopted by the Land*
6 *Conservation and Development Commission.*

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

8 ***

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

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

15
16 a. Compliance with Substantive Criteria

17
18 Attachment A of the Final Order approving the ASC is a detailed analysis of the facility's
19 compliance with applicable substantive criteria from the land use development codes of
20 Washington, Clackamas and Marion Counties. In the contested case on the Application for Site
21 Certificate, no party raised any challenge to that analysis. No county raised any concern regarding
22 the findings or conditions in that analysis.

23
24 The proposed amendment allows temporary construction access and laydown area outside
25 the original 200-foot corridor on 40 properties, all included in the original corridor. No previously
26 unanalyzed property is affected, nor is any previously unanalyzed zone included. The proposed use,
27 equipment access and laydown area for construction of the natural gas pipeline, is the same use
28 analyzed in Attachment A of the Final Order approving the Application for Site Certificate. NWN
29 has listed¹ the changes to applicable zoning ordinances between March 2001 (date of the original
30 Application for Site Certificate) and June 5, 2003 (date of this amendment request). The changes
31 do not substantively affect this amendment request or negate the conclusions in Attachment A of the
32 Final Order approving the Application for Site Certificate. Moreover, all affected local city and
33 county governments were provided with the amendment request and asked to comment, and none
34 did so.

35
36 Other proposed changes to the Site Certificate are a modification of the AIMP, a request to
37 widen the permanent easement on 2 properties within the 200 foot corridor, and a request to relax
38 the requirement for 2 feet of separation between the SMPE and other underground structures.
39 These changes do not change the proposed use, nor do they affect the basis for findings of
40 compliance in Attachment A of the Final Order approving the ASC.

41
42 The Council therefore finds that the proposed amendment does not alter the findings of
43 compliance with applicable substantive criteria from the land use plans of affected local
44 governments as described in Attachment A to the Final Order approving the ASC.

¹ See Attachment 1, NWN June 26 2003 response to OOE RAI #1.

1
2 b. Compliance with ORS 215
3

4 The proposed amendment includes a change to the AIMP, a change to Public Safety
5 Condition 2(c), a request for additional permanent easement within the 200 foot-corridor at one
6 location, and a request for equipment access and laydown area outside the 200 foot corridor at 13
7 locations involving 40 specific properties.
8

9 The proposed change to the Public Safety condition does not affect compliance with the
10 Land Use standard. NWN proposed the change to the AIMP after discussion with the Washington
11 County Farm Bureau. The Council approved the AIMP in its Final Order approving the ASC, and
12 imposed it as a site certificate condition in order to mitigate and minimize the impacts on farm land
13 in order to prevent a significant change in accepted farm practices or a significant increase in the
14 cost of farm practices, as required by ORS 215.275(5). The proposed revision is an alternate
15 method of topsoil segregation, which may be selected at the landowner's request. The alternate
16 method will not reduce the effectiveness of topsoil segregation and may result in reduced topsoil
17 disturbance on some properties. Therefore this revision is still an effective measure to minimize
18 and mitigate impacts in order to prevent a significant change in accepted farm practices or a
19 significant increase in the cost of farm practices, as required by ORS 215.275(5).
20

21 The proposed widening of the permanent easement within the 200 foot corridor would be a
22 site-specific exception to Land Use Standard Condition 2, which limits permanent easement along
23 arterial or collector roads to 20 feet beyond the edge of the public RROW. NWN requests
24 permission to extend the permanent easement an additional 10 feet outside the RROW at the
25 intersection of Barlow and Mark Roads, in Clackamas County (*see* ASC Exhibit K-2 panel 40).
26 The extension would be approximately 200 feet long. NWN requests this exception to prevent
27 damage to two large trees at this intersection. The trees are not specially designated as Heritage
28 Trees or any other special designation. The property owner asked NWN to avoid cutting these
29 trees, apparently because they provide shade for farm workers during breaks. The reasonable
30 alternative to the requested amendment is removing the tree. The Council concludes that there is
31 some value in providing a shady place for farm workers to rest, and that this site specific exception
32 to Land Use Standard Condition 2 would not significantly reduce that condition's effectiveness in
33 preventing a significant change in accepted farm practices or a significant increase in the cost of
34 farm practices.
35

36 Exhibit 3 of the amendment request lists 13 locations where NWN proposes to use land
37 outside the 200-foot corridor for temporary access or workspace. In some cases the temporary
38 access or laydown area spans several properties so that a total of 40 properties are involved. At
39 some locations NWN requests a combination of temporary access roads and workspace.
40 Considering each access route or work area separately, there are 27 items requested in total. All are
41 contiguous to the 200-foot corridor. In Marion county, all are in the EFU zone. In Clackamas
42 county, 1 property is in a rural residential zone; the remainder are EFU. In Washington county, 7 of
43 the affected properties are in exception zones; the rest are EFU.
44

45 NWN argues that “***an alternative analysis under ORS 215.275(2) is not appropriate for
46 the property-specific easement expansion proposed here.”² However, the proposed use would

² NWN argues that the Council's finding of compliance for the SMPE applies to this amendment. NWN states that “***the Council has already determined that the SMPE meets the Land Use Standard and NW Natural is now seeking only site-specific relief from conditions that severely limit easement widths.

1 impact new EFU land that was not considered in the ASC. Reasonable locational alternatives to the
2 proposed temporary access routes and workspaces that are outside the EFU zone are not available,
3 because the corridor itself is in the EFU zone and the access to it must be contiguous. Where the
4 approved corridor is in the EFU zone it is necessary for the temporary workspaces to be in the EFU
5 zone because the fabrication and welding activities must take place close to the trench in which
6 NWN will install the pipe. For example, many of the requested workspaces would support HDD
7 bores, and it is not practical to fabricate long pipeline segments far from the bore and carry the
8 segments a great distance. Therefore the obvious reasonable alternative to these access routes and
9 workspaces is the alternative of staying within the already approved corridor. The Council's
10 obligation under ORS 215.275 implies an obligation to compare each of the 26 easement
11 expansions with the alternative of staying within with already approved corridor. Moreover, the 26
12 proposed expansions are independent of one another; it is possible to approve all, none or some of
13 them without affecting the others. Therefore this order considers each expansion request separately.

14
15 (1) Mountaindale Horizontal Directional Drill (HDD)

16
17 NWN proposes to use about 100 feet of existing farm road to approach an HDD bore pad on
18 the Shirazi property. The access was not requested earlier because originally NWN planned to start
19 the HDD from the north side of Mountaindale Road and bore underneath the entire property. NWN
20 now proposes a short "slick bore" (a simpler type of bore that is often used for short crossings such
21 as roads) under Mountaindale road and the two wetlands just to the south of the road. NWN would
22 then use a shorter HDD bore to cross Dairy Creek and the habitat area along its banks.

23
24 The shorter HDD bore reduces impact on the property at the "exit" end of the bore (the
25 Cropp property), because it requires less laydown area at this end. The laydown area on the Cropp
26 property is on a farmed field. The shorter bore would reduce the laydown area on this field by
27 about 1800 feet, which more than offsets the use of 100 feet of existing farm road proposed in this
28 request.

29
30 The approach using the farm road would enable NWN to avoid impact to the wetlands
31 mentioned above. The wetlands in question are functional, i.e. they are not taken over by reed
32 canary grass and are not farmed. For this reason, permitting requirements for a U.S. Army Corps
33 404 permit require that NWN avoid the wetlands unless avoidance is impractical or is precluded by
34 other regulations.

35
36 Moreover, the 100 feet of access road results in the least overall impact because the farm
37 road (outside the corridor) and the wetland (inside the corridor) are both in the EFU zone, and using
38 one of them will allow NWN to avoid the other. Taking this into account, the use of the existing
39 farm road is the lower impact alternative.

40
41 Traveling from north to south, the next 4 corridor expansions requested by NWN are shown
42 on Panel 13 of Exhibit 4 to the amendment request. This panel shows the corridor at the Tualatin
43 Valley (TV) Highway crossing. On this complicated panel, NWN requests:

- 44
45 1. an access road going due west from Padgett Road to the corridor (Waibel property), on
46 existing farm road;

Regarding ORS 215.275, NWN argues that "Because NWN is not proposing a new use in EFU zones, it is not appropriate to conduct a new analysis under ORS 215.275." NWN also notes that "the Council correctly concluded that ORS 215.275(2) does not require property-by-property analysis."

- 1 2. an access road going due south from the Waibel's farm road, joining the corridor on the
2 Evans property;
- 3 3. an access road going due west from the southern end of Cavens Road on the Wetter
4 property. The eastern half of this access would be on existing driveway, and the western
5 half would be over a farmed field;
- 6 4. a curved route from the TV highway to the bore pad on the Aguilar property.

7
8 Although these are four requests, they work together and complement each other. The
9 pipeline segment in this area does not follow a road for about a mile.

10
11 (2) Tualatin Highway HDD (Waibel property)

12
13 The first (and most northerly) access request follows an existing farm road. It would reduce
14 overall farm impact because NWN would deliver equipment and material to the corridor along the
15 existing farm road, instead of having all of the traffic be on the farmed land occupied by the
16 corridor.

17
18 (3) Tualatin Highway HDD (Evans property)

19
20 The second access road is actually a spur south from the farm road described above. It
21 would provide access to the corridor at a point about 1600 feet further south. The corridor in
22 between these two access points crosses a stand of large trees, considered category 4 MF mixed
23 forest habitat (*see* supplemental figure P-2 sheet 3-41.) The Proposed Order on the ASC³ states that
24 measures to minimize impact to this habitat would be the same for categories 3 and 4. It states that
25 “****NWN proposes to reduce the direct impacts to category 3 deciduous forest habitats by:*
26 *confining construction activities to an 80-foot wide construction corridor; avoiding removing large*
27 *woody vegetation where practicable ****”

28
29 In order to maintain a narrow construction corridor and avoid removing the large trees in
30 this habitat area, NWN must approach it from both sides. The southward access route on the Evans
31 property is necessary for this.

32
33 (4) Tualatin Highway HDD (Wetter property)

34
35 Further south, (on the Wetter property) NWN proposes the third temporary access road in
36 this area. This temporary access would use the Wetters' existing driveway from Cavens Road, but
37 must also cross farmed land for about half its length. This route is not wide enough to transport the
38 large pipe segments and heaviest equipment, but would reduce impact on the farm properties further
39 to the north by taking the general construction traffic. It may reduce overall adverse impact, because
40 it follows existing driveway for about half its length.

41
42 (5) Tualatin Highway HDD (Aguilar)

43
44 The most southerly temporary access on panel 13 is on the Aguilar property immediately
45 adjacent to the Tualatin Valley highway. The terrain is not easily seen from the photograph, but the
46 highway is built up on fill, about 20 feet above the surrounding bottomland. There is very little

³ The Proposed Order on the ASC was issued in September 2002 and was incorporated by reference into the Final Order Approving the Site Certificate.

1 shoulder. The steep embankment and lack of shoulder make it impractical to deliver equipment and
2 material directly from the highway to the bore pad for the Tualatin Valley highway HDD bore.
3 This one bore pad is used for two HDD bores, one under the highway to the south and one under the
4 railroad and stream crossing to the north. Although not easily seen from the photograph, the
5 proposed access route on the Aguilar property is currently used as a farm road and is rocked and
6 graveled for much of its length.

7
8 (6) Tualatin River HDD (permanent access requested)

9
10 NWN requests a permanent access route outside the corridor on land owned by Clean Water
11 Services. This access route is necessary because there is no practical access route from any road on
12 this stretch of the corridor. At the point where the access is requested, the corridor's nearest
13 intersection with a road (Highway 219) is approximately a mile to the south. Access from the north
14 is precluded by the Tualatin River and by forested wetlands. A second, temporary access is
15 requested further to the south, near the bore pad for the second Tualatin River crossing. This
16 second access close to the bore pad is necessary because of the practical considerations in carrying
17 the large bore equipment.

18
19 Once construction is complete, NWN requests permission to use the Clean Water services
20 easement as a permanent inspection access route. They committed to accessing the corridor only by
21 foot. This commitment will be a condition to the amendment under OAR 345-027-0020(10). At
22 the east end of the Clean Water Services easement, the access to public road would be through land
23 within the City of Hillsboro and zoned M-2 (industrial). The pipeline is not a permitted use in this
24 zone, but the Final Order Approving the Site Certificate includes findings of compliance with
25 statewide planning goals for this zone.

26
27 (7) Pleasant Valley Road (Farmer property)

28
29 At the southern end of the corridor along Pleasant Valley Road, the corridor leaves the road
30 and crosses land in order to line up for the most southerly of three HDD bores under the Tualatin
31 River. ASC Exhibit K-2 panel 23. NWN requests additional temporary workspace outside the 200
32 foot corridor just north of the HDD bore pad. In its amendment request NWN notes that the
33 National Wildlife Refuge borders Pleasant Valley Road, leaving workspace at a premium. The
34 requested workspace uses existing BPA right-of-way, but the BPA tower consumes a large footprint
35 within the 200 foot corridor, making additional space outside the 200 foot corridor necessary for
36 staging the HDD bore.

37
38 (8) Chicken Creek HDD

39
40 This bore is necessary to avoid wetlands and habitat. The pipeline is under existing right of
41 way for a PGE electrical transmission line. The original ASC shows that NWN planned to use
42 laydown area for this bore on a section of the 200 foot corridor that leaves the PGE right of way and
43 continues south for about 1,000 feet before joining Haide Road. (*see* Panel 25 and 26). This
44 original laydown area was within the corridor but was not directly in line with the bore. NWN
45 states that curves on Haide road and a riparian canyon make it necessary to relocate the laydown
46 area. NWN proposes to use laydown area on the PGE right of way, which is directly in line with
47 the HDD bore. This portion of PGE transmission right of way is not near a road. Therefore NWN
48 requests temporary access outside the 200-foot corridor to service the south end of the laydown
49 area. The temporary access would be on an existing farm road. NWN states that additional

1 workspace is needed at the northern end of the laydown area (the exit point for the bore) and at the
2 southern end of the laydown area.

3
4 In any case, two affected properties (O’Neil and Babcock) are in the AF-10 zone, which
5 Washington County does not treat as exclusive farm use. (*see* Final Order approving ASC,
6 Attachment A). The third affected property (Leach) is AF-20, and NWN has requested workspace
7 on this property at the southern end of the HDD laydown area. NWN states that without this
8 workspace the HDD across Chicken Creek is impossible.⁴

9
10 (9) Brookman Road West (Howard and Sparks)

11
12 NWN requests additional workspace on two properties at the west end of Brookman Road
13 because of the bore under Highway 99W and to support construction of the Sherwood Gate Station
14 (one of the required isolation valves and a connection with a 10-inch feeder for Sherwood). The
15 space is also necessary for equipment parking because the Brookman ROW is narrow and will not
16 accommodate construction related parking.

17
18 The properties are zoned AF-10 or AF-5 on both sides of the road and therefore are not EFU
19 (*see* Final Order approving ASC, Attachment A). Their use will reduce the use of EFU land further
20 down the corridor by providing room in exception zones for fabrication and staging.

21
22 The second temporary work area on the south side of Brookman road is the bore pad for a
23 new HDD bore, not previously described in the ASC. This new bore will go under almost the full
24 length of Brookman road and will exit 400 feet west of the point where the pipeline turns south
25 toward Parrett Mountain. This bore will avoid all of the stream crossings in this area and will
26 greatly reduce impact on properties to the east, when compared with the open trench construction
27 originally proposed.

28
29 (10) Brookman Road –east

30
31 Additional laydown area outside the 200-foot corridor is necessary at the east end of
32 Brookman Road, at the exit of the HDD bore under Brookman road. This bore is unusually long
33 and requires considerable workspace outside the originally approved corridor. In Washington
34 County the laydown area uses road right of way as much as possible, but because the bore is very
35 long, NWN cannot lay the pipe down in one long string but must use three parallel pipe strings.
36 Therefore, additional laydown area outside the right of way is necessary. The property in
37 Clackamas County where NWN requests the use of land outside the 200-foot corridor is in the
38 RRF zone for which the Council made direct findings of compliance with statewide planning goals
39 in accordance with ORS 469.504(1)(b)(B). (Final Order approving ASC, Attachment A)

40
41 (11) Corral Creek HDD (Baker property)

42
43 Just north of the Willamette crossing, the approved corridor includes an HDD bore under
44 forested areas along Corral Creek (panel 31). NWN states that the original laydown area for this
45 HDD would impact a septic drain field and possibly a historic barn. NWN proposes to move the
46 laydown area slightly to the west in order to avoid the residence and septic drain field. The location
47 of the laydown area is changed but not the amount. NWN also proposes widening the temporary

⁴ See June 26, 2003 response to RAI.

1 workspace at the north end of the bore (the south end of the property) to preserve a large oak tree
2 that is in the corridor.

3
4 (12) Willamette HDD – Park and Rec. Land

5
6 Panel 33 of Exhibit 4 to the amendment request shows four separate requests, all associated with the
7 Willamette bore:

- 8
9 1. A large workspace on State of Oregon property
10 2. A temporary access route west of the corridor, using existing farm road
11 3. A new laydown area for the bore, next to the corridor but not in it.
12 4. Temporary access route across Klupenger nursery to the south of the bore.

13
14 The workspace on State of Oregon property is necessary for several reasons. Besides being
15 the water intake and outfall for the hydrostatic test, NWN must have a staging area for the southern
16 half of the project, similar to the one on Mountaindale road for the northern half. The project is too
17 long to complete with just one staging area. The land is owned by the Oregon Parks and Recreation
18 Dept, which has given its permission in writing. The temporary workspace would not interfere with
19 future plans in any event. Use of this undeveloped land for staging would minimize farm impact by
20 reducing impact on more cultivated land further south.

21
22 (13) Willamette HDD – access from Butteville Rd.

23
24 The temporary access route west of the corridor (Sweningson property) follows existing
25 farm road. Although outside the corridor, it reduces farm impact by taking traffic away from the
26 corridor at the southern end of the Willamette bore, which is farmed land.

27
28 (14) Willamette HDD – temporary laydown area

29
30 Because of bends in the corridor, the proposed laydown area outside the corridor is
31 necessary to provide a path that lines up with the bore. The new laydown area at the exit of the
32 bore is necessary because the corridor itself turns due to the terrain (not obvious from aerial
33 photograph). The forested area along the Clackamas/Marion county line on Panel 33 is an abrupt
34 ridge (again, not evident from aerial photographs) and the pipeline will not bend with the contours
35 of the ridge. The pipe laydown for the Willamette bore must be straight in order to go through the
36 bore. Therefore, NWN requests laydown area that allows a straighter path. The requested laydown
37 area follows existing driveway to the Downey residence before threading the needle through
38 forested land on the south side of the ridge. NWN has committed to not removing trees in this MF-
39 4 habitat zone (*see* supplemental figure P-2, sheet 2-107).

40
41 In its Request for Additional Information, the Office of Energy noted that the 1999
42 expansion of the South Mist Feeder (amendment #2 to the South Mist Feeder Pipeline) traveled
43 over rough terrain in areas with no public roads, and NWN had successfully used the corridor itself
44 for access. The Office asked if NWN could do the same for the SMPE. NWN replied that the 1999
45 project made use of logging roads in the forested areas, but no such logging roads exist in the farm
46 zone.

47
48 (15) Willamette HDD – access from Klupenger Road

1 The fourth and most southern temporary access request on Panel 33 allows access to the
2 corridor from Klupenger road by going west across Klupenger Nursery. Although not obvious from
3 the aerial photo, a field visit showed that the Klupenger Nursery is a highly developed facility, with
4 wide and well graded gravel roads that are clearly designed for truck deliveries between the public
5 roads, greenhouses and growing areas, on an almost daily basis. Any use of these private roads
6 would reduce physical impact to farmed land.

7
8 (16) Arndt Road

9
10 NWN states that additional workspace outside the 200 foot corridor is necessary for staging,
11 materials storage and equipment parking associated with in-road construction west of Boones Ferry
12 Road and for the Hubbard crossing.

13
14 (17) Anderson Road – access to Barlow

15
16 Between the Pudding River crossing and the city of Barlow, NWN proposes to use RROW
17 on Anderson road for the pipeline. During construction, Anderson Road will be closed. NWN
18 proposes to provide a detour around Anderson Road for use by local residents. The temporary
19 access route is necessary because NWN cannot construct the pipeline on Anderson Rd. without
20 some road closures, and it is required to minimize impact on farming operations because there are
21 no other local roads available. NWN proposes to use an existing farm road for this detour.

22
23 (18) Anderson Road – access to laydown area

24
25 The existing laydown area on the east bank of the Pudding River HDD includes a stream
26 crossing, and is not near a road. Temporary access and workspace is necessary to transport material
27 from Anderson road to the laydown area for the bore.

28
29 (19) Barlow Road – new HDD

30
31 NWN has added a new HDD along Barlow road (see Panel 39) to mitigate archeological,
32 agricultural and wetland/habitat impacts. NWN states that the change will remove approximately
33 3000 feet of EFU impact and shift it to the public RROW. Temporary workspace outside the 200
34 foot corridor is necessary to perform this bore.

35
36 (20) Barlow Road – isolation valve

37
38 Further south on Barlow Road, NWN will install an isolation valve (see Panel 40)
39 Temporary workspace outside the 200 foot corridor is necessary for a horizontal bore across Barlow
40 Road, and for the valve installation.

41
42 (21) Barlow and Hansen Roads

43
44 Just north of where the corridor turns eastward from Barlow road, NWN must cross a stream
45 and will place part of the pipeline under the road surface. Temporary workspace outside the
46 corridor is necessary for the stream crossing and the hard surface installation. (see Panel 41)

47
48 (22) Heinz Road – west access

1 The corridor at this point does not follow a road but follows property lines parallel to Heinz
2 Road. (see Panel 42) Temporary access is needed between the corridor and the road. NWN will
3 use existing farm road.

4
5 (23) Heinz Road - east access
6

7 NWN requests an additional temporary access route between the corridor and Heinz Road.
8 (see Panel 43) The additional access is necessary at this location because a stream crossing restricts
9 the width of the construction right-of-way. NWN also states that this access route will reduce
10 impact to crops on this property. NWN will use an existing farm road.

11
12 (24) Heinz and Dryland Roads - workspace
13

14 Before turning south on Dryland Road, the corridor cuts diagonally to avoid a wetland. A
15 stream crossing is nearby. (see Panel 43) NWN requests workspace outside the 200 foot corridor
16 because the wetland and stream crossing require reduced width workspace. NWN also requests the
17 workspace for topsoil storage and formed segment fabrication.

18
19 (25) Dryland Road Temporary Access
20

21 The corridor at this point does not follow Dryland Road but follows property lines parallel to
22 the road. (see Panel 43) Temporary access is needed between the road and the corridor. NWN also
23 requests this temporary access route to provide access to the south side of a stream crossing in the
24 pipeline corridor.

25
26 (26) Dryland Road Workspace
27

28 NWN requests this additional workspace (see Panel 43) because a stream crossing restricts
29 the width of the construction right-of-way. NWN also states that to minimize long-term impact to
30 berry and filbert crops, it needs temporary space for topsoil storage, material storage, equipment
31 parking and pipe segment forming.

32
33 (27) Molalla Gate Station HDD
34

35 To avoid the Williams pipeline near the gate station, NWN will approach the gate station
36 with an HDD bore. NWN states that the bore will avoid approximately 925 feet of agricultural right
37 of way. Temporary workspace outside the corridor is necessary to accomplish the bore.

38
39 c. Obligation to Mitigate and Minimize under ORS 215.275(5)
40

41 The Council's responsibility under ORS 215.275(5) extends to the proposed amendment. In
42 the Site Certificate, the Council imposed conditions under this statute that limit the width of
43 permanent and temporary easements, limit the width of easements outside public right of way, and
44 require mitigation under the AIMP and PCCMP.

45
46 Section IV.A.3 of this order describes the proposed revision to the AIMP and explains why
47 it is clear, objective, and likely to mitigate as well or better than the original AIMP.
48

49 NWN has requested temporary access routes on 14 properties. On 11 of those properties,
50 the application for amendment states that NWN will use existing farm road. To the extent possible,

1 NWN selected routes that are already graded and graveled. In all cases, NWN selected routes over
2 a traveled path (except where a court ordered NWN to use another location) and committed to not
3 using gravel or rock where it does not already exist. A proposed condition requiring NWN to
4 adhere this statement under OAR 345-027-0020(10) is a clear and objective condition that would
5 minimize impact on the surrounding farm land. In its June 26, 2003 response to the Office's
6 Request for Additional Information, NWN requested access easements 30 feet wide. They stated
7 that 30 feet would allow farm vehicles to pass construction vehicles. This appears consistent with
8 the requirement to minimize impact on farm operations.

9
10 NWN has requested temporary workspace at 18 locations.⁵ In some cases, the workspace is
11 requested to reduce impact on more fragile agricultural land further down the corridor, or to avoid
12 surface trenching by increased use of HDD. At these locations, allowing the temporary easement
13 does minimize overall farm impact. Four of the properties are zoned AF-10 or rural residential. On
14 the remaining workspace areas in the EFU zone, impact is minimized by limiting the area to the
15 amount that the Council has found is necessary for engineering reasons.

16 17 **Conclusion**

18
19 NWN argues that a separate analysis of each access route and workspace is not required
20 because the SMPE is a single utility facility and was approved as one. Without comment on this
21 argument, each of 27 separate requests for additional access or workspace was compared with the
22 alternative of staying within the approved corridor. Each is necessary for engineering feasibility,
23 habitat mitigation, or to minimize impact on adjacent farms. In certain locations, NWN selected
24 existing farm road for access. In other locations NWN states that the increased workspace is
25 necessary to achieve net reduction in farm impact by HDD bore or hard surface installation. These
26 statements are considered commitments by NWN and are appropriately made conditions to this
27 amendment pursuant to OAR 345-027-0020(10). As so conditioned, the proposed temporary access
28 and workspace requests are permitted under ORS 215.213(1)(d) and ORS 215.275. The Council
29 approves the requested AIMP revision and incorporates it as a site certificate condition under ORS
30 215.275(5). Proposed conditions requiring use of existing farm road and limiting temporary access
31 road width are clear and objective conditions that minimize impact on the surrounding farm land in
32 order to prevent a significant change in accepted farm practices or a significant increase in the cost
33 of farm practices. Also, the permanent easement expansion within the 200 foot corridor is an
34 acceptable modification to the Land Use Standard conditions adopted under ORS 215.275. In
35 summary, the Council finds that the facility as amended meets the Council's Land Use Standard.

36 37 **5. Protected Area Standard OAR 345-022-0040**

38 To approve the amendment, the Council must find that "*...the design, construction and*
39 *operation of the facility are not likely to result in significant adverse impact ...*" to listed protected
40 areas.

41 42 **Discussion**

43
44 The SMPE crosses one listed area, the Willamette River Greenway. The Council found that
45 the crossing was permitted under OAR 345-022-0040(2) because NWN had studied alternative
46 locations for the Willamette crossing and found them to have greater impacts.

⁵ The 14 access routes and 18 workspaces adds up to more than 27 because in some cases NWN requested a combination of access route and workspace on one property.

1
2 The proposed amendment does not affect the location of the Willamette river crossing.
3 NWN requests additional laydown area on private land to accommodate the Willamette bore, but
4 the affected area is not in the Willamette Greenway and will have no impact on it. No other listed
5 protected areas are affected.
6

7 **Conclusion**

8
9 The proposed amendment complies with the Protected Area standard. No additional
10 conditions are required.
11

12 **6. Financial Assurance and Retirement Standards OAR 345-022-0050**

13 To issue the amendment, the Council must find that:

14
15 *(1) The site, taking into account mitigation, can be restored adequately to a useful,*
16 *non-hazardous condition following permanent cessation of construction or operation of*
17 *the facility.*

18 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit*
19 *in a form and amount satisfactory to the Council to restore the site to a useful, non-*
20 *hazardous condition.*

21 **Discussion**

22
23
24 In its Final Order approving the ASC, the Council found that the SMPE as a whole complied
25 with the standard. The Site Certificate requires NWN to obtain a restoration bond in the amount of
26 \$700,000 in 2001 dollars, and the Council found that NWN has the financial ability to obtain a bond
27 in that amount. The amount of the bond is a relatively small fraction of the project's overall cost,
28 estimated in the ASC at about \$80 million.
29

30 The amendment request does not significantly change the overall scope of the SMPE. The
31 need for temporary access and laydown area was contemplated in the original ASC. The impacts on
32 property described in the amendment request are the same impacts discussed in the ASC under the
33 Council's Soil standard. The amendment request does not involve trenching or excavation. The
34 restoration of land used for temporary access and laydown area is the same process described in the
35 AIMP for construction easements within the 200-foot corridor. The site certificate includes
36 conditions requiring the immediate restoration of construction easements. There is no reason why
37 the requested temporary easements for construction or laydown will significantly increase the cost
38 of compliance with these conditions or NWN's financial ability to meet them. Moreover, NWN has
39 selected existing farm roads on 11 of the 14 properties at which temporary access is requested.
40

41 **Conclusion**

42
43 The proposed amendment does not affect NWN's ability to meet Financial Assurance and
44 Retirement standard, or the conditions associated with it. The proposed amendment meets the
45 standard. No additional conditions are required.
46

1 **7. Fish and Wildlife Habitat Standard OAR 345-022-0060**

2 To issue the amendment, the Council must find that:

3
4 *“***the design, construction, operation and retirement of the facility, taking into*
5 *account mitigation, are consistent with the fish and wildlife habitat mitigation goals and*
6 *standards of OAR 635-415-0025 in effect as of September 1, 2000.”*

7
8 **Discussion**
9

10 In its Final Order approving the ASC, the Council found that the SMPE, taking into account
11 mitigation, would meet the Oregon Fish and Wildlife (ODFW) habitat mitigation goals. The
12 finding was based on the Council’s review of a habitat inventory, in which NWN listed the types of
13 habitat found in the corridor. The finding was then based on the Council’s review of a Conceptual
14 Mitigation Plan, in which NWN described typical mitigation actions for the various habitat types
15 listed in the inventory. In its ASC, NWN stated that the precise impact of construction would not
16 be known until the final design stage, but it committed to producing a final detailed mitigation plan
17 (DMP) once the design was finalized. The Council accepted this approach, and imposed numerous
18 conditions including a schedule for submittal and implementation of the DMP, a pre-construction
19 inventory of habitat and vegetation within the final pipeline alignment, and special conditions for
20 changing the impact to jurisdictional wetlands or higher quality (category 2 and 3) upland habitat.

21
22 In this amendment, NWN requests additional permanent easement at one property and
23 additional temporary access and workspace outside the 200 foot corridor at 26 locations spanning
24 40 properties. NWN’s biology consultants assessed the habitat categories in a 340 foot analysis
25 area for the proposed access routes and laydown areas that are outside the original 200 foot corridor.
26 NWN submitted detailed survey maps as Supplemental Figure P-2 of the Amendment Request.
27 NWN also submitted detailed habitat descriptions for 26 properties. NWN states that habitat in
28 categories 5 and 6 were not visited in the field, but GIS mapping of all habitat categories was
29 extended to meet the boundary of the 340 foot wide study corridor. [NWN’s consultant uses the
30 term “study corridor” to refer to the EFSC “analysis area.”]
31

32 The maps and descriptions show no habitat area higher than category 4 in the access routes
33 and laydown areas requested in this amendment. This is to be expected because the access routes
34 use existing farm roads where practical, and because in this primarily farmed region, habitat just
35 outside the 200 foot corridor is the same as the habitat within the original corridor. For this reason,
36 NWN did not identify any habitat of a type not previously identified in the ASC.
37

38 The amendment requests temporary access and laydown areas, but not any additional
39 trenching, excavation or other ground disturbance. NWN also states that there will be no clearing
40 of vegetation in the temporary areas that are classified as critical habitat. NWN’s biology
41 consultant concluded that impacts from the proposed construction access routes and work areas
42 “...would be temporary and surficial.” In certain instances the temporary access on low habitat
43 category land is proposed in order to avoid disturbing higher category land within the 200 foot
44 corridor. In two instances the workspace is requested to facilitate a previously unplanned HDD
45 bore. In these instances the habitat impact due to this amendment is not a net loss and arguably is a
46 net benefit.
47

48 The Site Certificate contains conditions for planning the final mitigation steps once the
49 precise alignment and construction impact is known. The conditions are written to apply to areas

1 affected by construction once they are identified. Therefore the conditions for the Fish and Wildlife
2 Habitat Standard can and will apply to the access roads and workspaces in this amendment.

3 **Conclusion**

4
5 The proposed amendment complies with the Fish and Wildlife Habitat Standard. No new
6 conditions are required.

7 8 **8. Threatened and Endangered Species Standard OAR 345-022-0070**

9 To issue the amendment, the Council must find that:

10
11 *“(1) For plant species that the Oregon Department of Agriculture has listed as*
12 *threatened or endangered under ORS 564.105(2), the design, construction, operation*
13 *and retirement of the proposed facility, taking into account mitigation:*

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

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

19 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
20 *threatened or endangered under ORS 496.172(2), the design, construction, operation*
21 *and retirement of the proposed facility, taking into account mitigation, are not likely to*
22 *cause a significant reduction in the likelihood of survival or recovery of the species.”*
23

24 **Discussion**

25
26 In its Final Order approving the Application for Site Certificate, the Council found that the
27 SMPE was not likely to adversely affect the survival or recovery of any species listed as threatened
28 or endangered.

29
30 As noted in the request for amendment, the properties where NWN requests an increase in
31 permanent easement width are within the 200 foot corridor and therefore already meet the
32 Threatened and Endangered Species standard.

33
34 As discussed under the Council’s Fish and Wildlife Habitat Standard, the 26 locations where
35 additional access and workspace outside the 200 foot corridor is requested are adjacent to the
36 approved corridor, are similar in habitat type and category to the approved corridor, and contain
37 habitat of categories 4, 5 and 6. NWN’s biological consultant did not observe any special status
38 species or their terrestrial habitats during its field investigation.

39
40 The amendment includes only one stream crossing that could affect fisheries resources
41 identified in Exhibit Q, the threatened and endangered species discussion in the ASC.

42 **Conclusion**

43
44
45 The proposed amendment complies with the Council’s Threatened and Endangered Species
46 standard. No additional conditions are required.

1 **9. Scenic and Aesthetic Values Standard OAR 345-022-0080**

2 To issue the amendment, the Council must find that:

3 *“(1) Except for facilities described in sections (2), to issue a site certificate, the*
4 *Council must find that the design, construction, operation and retirement of the facility,*
5 *taking into account mitigation, are not likely to result in significant adverse impact to*
6 *scenic and aesthetic values identified as significant or important in applicable federal*
7 *land management plans or in local land use plans in the analysis area described in the*
8 *project order.*

9 *(2) The Council may issue a site certificate for a special criteria facility under OAR*
10 *345-015-0310 without making the findings described in section (1). However, the*
11 *Council may apply the requirements of section (1) to impose conditions on a site*
12 *certificate issued for such a facility.”*

13 **Discussion**

14
15
16 In the Final Order on the ASC, the Council found that the SMPE would not adversely affect
17 scenic and aesthetic resources primarily because the pipeline would be underground, except for a
18 the relatively small visual impact from valves required by operational considerations and 49 CFR
19 192 safety regulations. The proposed access routes and workspaces in this request will not cause
20 additional impact to scenic resources because no permanent structures are proposed, and because
21 mitigation imposed by conditions under the Soil Protection and Fish and Wildlife Habitat Standards
22 requires the restoration of soil and vegetation.

23
24 **Conclusion**

25
26 The Council finds that the proposed amendment complies with its Scenic and Aesthetic
27 Values standard. No additional conditions are required.

28
29 **10. Historic, Cultural and Archeological Resources Standard OAR 345-022-0090**

30 To issue the amendment, the Council must find that:

31
32 *“*** the construction, operation and retirement of the facility, taking into account*
33 *mitigation, are not likely to result in significant adverse impacts to:*

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

36 *(b) For a facility on private land, archaeological objects, as defined in ORS*
37 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

38 *(c) For a facility on public land, archaeological sites, as defined in ORS*
39 *358.905(1)(c).”*

40 **Discussion**

41
42 The Council found that the SMPE is not likely to result in significant adverse impacts to
43 archeological resources, objects or sites based on surveys performed by NW Natural’s archeological
44 consultant. The Council imposed conditions that protect sites or objects uncovered during
45 construction, require NWN to avoid known archeological sites within the corridor, and require
46 NWN to survey temporary laydown areas and properties where NWN was denied access.

1
2 NWN's archeological consultant surveyed the proposed laydown areas and access roads
3 where it was practical and found no significant archeological sites, objects or protected resources.⁶
4 As written, the conditions in the site certificate would apply equally to the temporary access roads
5 and laydown areas requested in this amendment.
6

7 **Conclusion**

8
9 The Council finds that existing conditions, as currently written, apply to the access roads
10 and workspaces outside the corridor that are described in this amendment and are sufficient to
11 ensure compliance with the Historic, Cultural and Archeological Standard. No additional
12 conditions are required.
13

14 **11. Recreational Standard OAR 345-022-0100**

15 To issue the amendment, the Council must find that:

16
17 *“***the design, construction and operation of a facility, taking into account mitigation,*
18 *are not likely to result in a significant adverse impact to important recreational*
19 *opportunities in the analysis area as described in the project order. The Council shall*
20 *consider the following factors in judging the importance of a recreational opportunity:*

21 *(a) Any special designation or management of the location;*

22 *(b) The degree of demand;*

23 *(c) Outstanding or unusual qualities;*

24 *(d) Availability or rareness;*

25 *(e) Irreplaceability or irretrievability of the opportunity.”*
26

27 **Discussion**

28
29 In its Final Order on the ASC, the Council found that the SMPE would not adversely affect
30 any important recreational opportunity in the analysis area. The finding was based on the fact that
31 the SMPE is underground for its entire length (except for valves required for operation or for
32 safety), the temporary nature of increased traffic and other construction related impacts, and the fact
33 that NWN will bore under major rivers and streams. The Council did not impose any conditions.
34

35 The requested access roads and laydown areas are temporary and are not located near
36 recreational opportunities described in the ASC. NWN notes that two of the requested amendments
37 are intended to further avoid impact to the Jackson Bottom Wetlands
38 and the Tualatin Valley National Wildlife Refuge.
39

40 **Conclusion**

41
42 The Council finds that the proposed amendment complies with its Recreational Standard.
43 No new conditions are required.

⁶ The request for amendment names properties to which NWN was denied access; one property owner commented in writing that access was not requested. Nonetheless, conditions 6 and 7 under this standard require an archeological survey of the laydown area before construction, and would apply on these properties.

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12. Public Services Standard OAR 345-022-0010

To issue the amendment, 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.”*

Discussion

In its Final Order on the ASC, the Council found that the SMPE complies with the standard based on letters from local fire departments, police departments and other public services providers indicating that they expected no adverse impact on their ability to provide their services. The Council imposed 5 conditions, addressing the impact on traffic and traffic safety, the need to ensure that construction along roads does not affect police, fire and ambulance service, and the need to coordinate with school districts and county road departments.

In this request, NWN requests temporary workspace and temporary access to locations where the corridor is not along roads. Therefore the proposed amendment has no effect on the potential impacts to traffic safety, police, fire or emergency vehicle passage from the facility.

Conclusion

The Council finds that the proposed amendment meets its Public Services standard. No additional conditions are required.

13. Waste Minimization Standard OAR 345-022-0120

To issue the amendment, the Council must find that:

*“***(a) The applicant’s solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction, operation, and retirement 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.”

Discussion

In the Site Certificate, the Council imposed conditions governing the handling and recycling of solid waste, disposal of water from hydrostatic testing and minimizing the use of water for pressure testing by recycling. These conditions apply to construction activities wherever they occur, including any temporary laydown areas or access routes approved under this proposed amendment. Therefore this amendment would have no effect on NWN’s compliance with this standard or the conditions imposed under it.

1 **Conclusion**

2
3 The Council finds that the proposed amendment meets its Waste Minimization standard. No
4 additional conditions are required.
5

6 **B. Public Health and Safety ORS 469.401(2)**

7
8 In the Site Certificate, the Council imposed conditions affecting construction practices,
9 design, and surveillance using best practical technologies. These conditions would continue to
10 apply, and are not affected by the use of additional temporary laydown area or access routes.
11

12 NWN requests one change to a condition imposed under Public Safety. Public Safety
13 condition 2(c) requires NWN to maintain 24 inches of clearance between the pipeline and any other
14 underground structure. This condition was carried over from a condition imposed on amendment 2
15 to the South Mist Feeder site certificate in 1999.
16

17 In its amendment request, NWN notes that the 1999 condition was imposed for a right of
18 way that included an existing 16-inch gas transmission line and few, if any, other underground
19 structures. NWN notes that the pipeline may not be able to avoid all of the different structures that
20 may be in the corridor for the SMPE by a full 24 inches. Federal regulations at 49 CFR 192 require
21 at least 12 inches. The revised condition that NWN suggests would retain the requirement to keep a
22 24-inch separation between the SMPE and the existing 16-inch SMF pipeline. The Oregon Public
23 Utilities Commission, which enforces federal pipeline safety regulations in Oregon, commented in
24 favor of the proposed change, noting that one-call system and NWN’s commitment to install
25 warning tape above the pipeline should prevent third party dig-in events on private easements even
26 with the 12 inch distance.⁷
27

28 The Council approves the requested change to Public Safety Condition (2)(c), with the
29 additional statement that the 12 inch clearance required by 49 CFR 192 continues to apply.
30

31 **C. Other Site Certificate Conditions Requested by NWN**

32
33 In addition to the request for additional permanent easements at Clean Water Services and
34 on South Barlow Road, the access roads and workspaces outside the corridor, and the Public Safety
35 condition described above, NWN requests two changes to Site Certificate conditions. (*see*
36 *Application for Amendment, Exhibit 1*).
37

38 NWN requests a change to Land Use Condition 8, allowing topsoil storage outside the 80-
39 foot construction width, either within or outside the approved 200-foot corridor, if the landowner
40 requests it. In explanation of this request NWN says:

41
42 “****In NWN’s easement negotiations with landowners, however, landowners
43 sometimes wish to have topsoil stored elsewhere on their property.”
44

45 Presumably, the farmer would make this request if it would be less disruptive to the farm
46 operation. NWN’s request to let the landowner choose where on their property topsoil is stored is
47 consistent with the Council’s responsibility to minimize impacts in order to prevent a significant

⁷ Email message from Michael Thompson, OPUC Chief of Pipeline Safety July 11, 2003.

1 change in accepted farm practices or a significant increase in the cost of farm practices. The
2 Council modifies the site certificate condition as requested.

3
4 Finally, NWN asks the Council to add “****(e) access to the pipeline construction*
5 *easement****” to the list of criteria that OOE must use in determining whether to grant a deviation
6 from the 80-foot construction easement width in Mandatory Condition 7. The requested
7 amendment would only apply in the 200-foot corridor; access roads outside the corridor would still
8 require an amendment from the Council. The requested amendment would still require OOE to pre-
9 approve such deviations after landowner consultation. The requested criterion is objective.
10 Therefore, the Council modifies Mandatory Condition 7 as requested.

11 12 **V. ISSUES RAISED IN PUBLIC COMMENT**

13 14 **A. Comments on the Request for Amendment**

15
16 The Office of Energy accepted public comments on the Request for Amendment until the
17 close of business on July 7, 2003. Stephen Baker, Ellyn McNeil, and Robert and Eleanore Sabbe
18 commented.

19
20 Stephen Baker commented that the requested change to the laydown area and workspace on
21 his property immediately to the north of the Willamette River Crossing were not necessary because
22 they were already reflected in the Site Certificate and in his easement with NWN. He objected to
23 the description in Exhibit 3 (of the amendment request) of a temporary access road on his property.
24 He objected NWN’s statement that they had been refused access to his property for archeological
25 survey. And, he stated that the requested addition of the new criterion to Mandatory Condition 7.iv
26 (“access to pipeline construction easements”) was too vague.

27
28 Mr. Baker was correct in saying that NWN had not requested access to his property for
29 archeological survey. The request for amendment was in error. However, NWN corrected the error
30 by requesting such access on June 19, 2003. Mr. Baker refused access on June 20 because at this
31 time of year the crops are high, and he suggested that NWN survey later in the year when the field
32 is fallow. Therefore the end result for purposes of this Order is the same; NWN is required by
33 condition to perform the necessary surveys before construction, and document the results.

34
35 Mr. Baker was also correct in saying that no temporary access road was requested on his
36 property. The reference to a temporary access road on his property was in error, and in fact no such
37 road was shown on the maps and photos that NWN submitted as Exhibit 4 to the amendment
38 request. NWN acknowledged the error in its June 26 response to the Office’s Request for
39 Additional Information. Since no access road was actually requested and none is approved, no
40 harm was done.

41
42 Mr. Baker was incorrect in asserting that the changes to the laydown area and workspace on
43 his property are already included in the Site Certificate. The basis for the Site Certificate, as
44 approved on March 13, 2003, was the set of aerial photo panels known as Exhibit K Figure 2 of the
45 Application for Site Certificate, dated March 2001. These photo panels support NWN’s description
46 of the currently approved corridor.

47
48 Finally, Mandatory Condition 7 does not give NWN the free hand that Mr. Baker alleges. It
49 only allows NWN to expand its construction easement within the approved corridor. It requires

1 prior OOE concurrence, with participation from the property owner. The requested amendment
2 does not greatly broaden the scope of this condition but merely adds one criterion to the list of
3 criteria that OOE considers in determining whether to allow the wider easement.
4

5 Ellyn McNeil wrote in support of the alternative topsoil segregation method. She noted that
6 the Farm Bureaus had suggested other changes to the AIMP, that NWN had not accepted those
7 suggestions, and that NWN did not continue to negotiate with the Farm Bureaus after the Farm
8 Bureaus filed their appeal of the Site Certificate with the Supreme Court. She added that the AIMP
9 is far from adequate. However, those concerns are outside the scope of this amendment request and
10 are not reasons to deny the amendment.
11

12 Ms. McNeil commented that the amendment request does not say how many acres area
13 affected by the workspaces requested. However, this also is not a reason to approve or deny the
14 workspaces. The relevant question is whether the workspace are necessary for technical, safety,
15 locational, environmental, or farm impact reasons. NWN stated in its June 26, 2003 response that it
16 needs the temporary access roads to be 30 feet wide in order to allow farm vehicles to pass
17 construction vehicles. Since NWN must pay for and restore the temporary workspaces they use,
18 they appear to have little incentive to acquire more than they need. Ms. McNeil expressed concern
19 that NWN will request a second amendment at a later date. However, no rule or statute prohibits
20 NWN from requesting an amendment at any time.
21

22 Ms. McNeil repeated Mr. Baker's concern that the requested change to Mandatory
23 Condition 7 was too broad. However, Mandatory Condition 7 only allows NWN additional
24 construction easement within the approved corridor and only with prior OOE approval. The
25 requested change simply adds a new criterion for OOE to consider. Ms. McNeil commented that
26 these workspaces and access routes would not be needed if the facility were sited in public right of
27 way. But that issue was already decided in the contested case on the Application for Site Certificate
28 and is not reopened by this amendment request.
29

30 Ms. McNeil asked if NWN had analyzed alternatives to the uses in the EFU zone proposed
31 in this amendment. In the discussion of ORS 215 in this Order, each requested access road and
32 workspace was compared with the alternative of staying within the approved corridor, and NWN
33 was required to show that each expansion was "necessary" for reasons consistent with ORS
34 215.275. In the specific case of the O'Neil, Leach and Sparks properties, the Washington County
35 Land Use Department (phone communication with Terry Lawler) confirmed that the O'Neil and
36 Sparks properties are zoned AF-10 and AF-5.⁸ The Sparks property in particular will actually
37 decrease use of EFU land by facilitating an HDD bore under EFU zoned land further to the east.
38 And, in its June 26 response NWN stated that without the temporary workspace and access on the
39 Leach property, the HDD bore under Chicken Creek would be "physically impossible".
40

41 Ms. McNeil stated that EFSC should wait for the pending Supreme Court decision on the
42 Final Order approving the Site Certificate before considering an amendment. On July 22, 2003 the
43 Farm Bureaus requested an emergency stay of the Council's order pending the Supreme Court's
44 review, as permitted by ORS 469.403(4). The Court denied the stay by order dated July 30, 2003.
45 Thus, the site certificate is in full effect. The statutes and rules do not prohibit a certificate holder
46 from requesting an amendment during an appeal.
47

⁸ Some of the zones in Exhibit 3 of NWN's request were in error. The correct zones were identified with help from Ms. Lawler of Washington County Land Use Dept. NWN submitted a corrected table of zones in its June 26 response.

1 In summary, Ms. McNeil's comments largely renewed the Farm Bureau's objections to the
2 pipeline in general, but did not provide evidence that this amendment should be denied.
3

4 The Sabbe property is affected by the pipeline, but not by this amendment. Their comment
5 describes their objection to the pipeline but does not address this amendment.
6

7 **B. Comments on the Proposed Order and Requests for Contested Case** 8

9 The Office accepted comments on the Proposed Order and requests for contested case until
10 August 11, 2003. Seven people commented. None requested a contested case.
11

12 Stephen Baker objected to the way the Proposed Order explained NWN's reasons for
13 requesting the amendment on his property. He wrote that *“***additional statements about
14 avoiding the barn, cutting the oak tree, etc. *** are completely new statements from NWN. NWN
15 has never made a verbal or written comment to me or in the public record about cutting down the
16 heritage oak tree or removing the 19th Century barn. This is not stated in their Amendment
17 Request *** The statements made in the Proposed Order should reflect earlier information or prior
18 statements***”*
19

20 However, Mr. Baker's request to NWN (made during easement negotiations) to avoid his
21 drainfield, barn and tree were described in Exhibit 3 of the Amendment Request, and appear to be a
22 reasonable basis for allowing the change in laydown area. Mr. Baker later clarified his position,
23 saying that *“***I wish to change my earlier objections to the Amendment and wish to emphasize
24 that I do agree with NWN's request to change the alignment and the laydown area on my property
25 for the specific purposes of preserving the heritage oak tree, avoiding the septic drain field and my
26 mother's house, avoiding boring under or removing the 19th Century barn, and following the more
27 appropriate contour of the field away from the 150 year old stand of fir timber.”*
28

29 Mr. Baker further stated that maps and representations given to landowners during easement
30 negotiations should be consistent with the route approved by the State. However, the Council has
31 no jurisdiction over easement negotiations.
32

33 Mr. Earl Walker, an interested person who lives within 500 feet of the corridor, raised a
34 concern about proposed Land Use Condition 8.b, which would allow a farmer to request that the
35 segregated topsoil be stored outside the 80-foot easement and possibly outside the 200-foot
36 corridor. The proposed condition stated :

37
38 if a landowner requests topsoil storage on the landowner's property in a location outside the
39 80-foot easement width, NW Natural may acquire and utilize a temporary easement
40 covering such other location
41

42 Mr. Walker was concerned that the topsoil would improperly be used to fill a pothole or a
43 wetland, and not be properly replaced. The proposed condition was based on the premise that the
44 property owner would select what was best for the productivity of the farm. That premise is
45 reasonable, but Mr. Walker's concern is also reasonable. The solution to this concern should not
46 overwhelm the original request. The Office recommends, and the Council adopts, modified
47 language as follows:
48

49 if a landowner requests topsoil storage on the landowner's property in a location outside the
50 80-foot easement width, NW Natural may acquire and utilize a temporary easement covering such

1 other location. The selected location may not alter the contour or drainage in any flood hazard zone
2 and may not affect any wetland as that term is defined in the Oregon State Land Division's wetland
3 delineation criteria. All topsoil so stored shall be returned to its original location in or along the
4 pipeline trench.
5

6 Six individuals commented that 12 inches of separation between the pipeline and other
7 underground structures is not sufficient, and the required separation should remain 24 inches.
8 However, NWN explained in their amendment request that in some locations there is no room to
9 provide 24 inches of separation. The pipe is not flexible enough to make the bends that would be
10 required to maintain 24 inches of separation everywhere. Also, the OPUC Chief of Pipeline Safety
11 wrote: *"I have no problem with the change in the clearance Northwest Natural is requesting on*
12 *their Mist line. Under 192.325(a) of the code of federal regulations a minimum of 12 inches of*
13 *clearance is required so they are still within code. In addition they are installing a six-inch warning*
14 *tape over the entire length of the line. Which in conjunction with the requirements of the Call before*
15 *you dig laws will help in protecting the line from other facility operators digging into it."*
16

17 Some individuals commented that NWN should not be granted additional access roads or
18 workspace unless the land owner agrees and is compensated. However, the Council has no
19 jurisdiction over compensation. NWN negotiates easements and compensation directly with the
20 property owners, outside the EFSC process.
21

22 Two people commented that NWN should only remove topsoil over the ditch. However,
23 NWN's commitment to segregate topsoil outside the ditch is part of the Agricultural Mitigation
24 Plan submitted with their application for site certificate. That plan was subject to a full review
25 process and a contested case, and the Council concluded that the topsoil segregation as described in
26 the AIMP was appropriate for soil protection. No one commented against allowing the farmer to
27 choose the area where the topsoil is stored.
28

29 **VI. ORDER AND SITE CERTIFICATE AMENDMENT**

30
31 The Council finds that the changes to the facility described in NWN's Application for
32 Amendment 1 to the Site Certificate for the SMPE comply with the Council's standards. The
33 Council adopts the changes proposed by NWN and listed at section III.C of this order, with the
34 following additional conditions⁹:
35

36 To Section IV.D Conditions under OAR 345-027-0020(10), add:
37

38 4) All temporary access roads will take the form of a traveled path, except where a court has
39 ordered NWN to use another location and that location is permitted by the site certificate. NWN
40 shall not apply gravel to any of the farm roads unless the road is already graveled prior to their use
41 of it.
42

43 5) Temporary access roads outside the 200-foot corridor will be at most 30 feet wide. This width
44 was selected to accommodate the simultaneous passage of construction equipment (e.g., an 11-foot
45 track hoe) and a 10-foot-wide farm tractor with implements.
46

⁹ Conditions proposed as Land Use Conditions 8.a and 8.b will be assigned a new number, to distinguish them from conditions in the original site certificate.

1 6) Once construction and restoration are completed, the Clean Water Services easement will only be
2 used by inspectors as a footpath, except where there is an existing road.
3

4 7) Along the PGE power line right of way, NWN will minimize surface impact by restricting right-
5 of-way access to vehicles such as side booms and tractor-mounted winch units. NWN will not cut
6 any of the coniferous trees outside of the power transmission right-of-way.
7

8 8) There will be no clearing, grading, or ground disturbance on the workspaces and access routes
9 other than the impact of driving vehicles and storing equipment and material. At the Chicken Creek
10 bore laydown area in PGE's right-of-way, brush may be cut back to facilitate side-boom access, but
11 no grading will take place. Following construction, the shrubs will be allowed to grow back. This
12 condition is not intended to preclude post-construction site restoration activities.
13

14 9) NWN shall use existing farm roads on the 11 properties (Shirazi, Wetter, Davis, Leach, Parks
15 and Rec, Sweningson, Downey, Klupenger, Anderson, Lais and DeMartini)
16

17 10) If workspace is needed to accommodate hard surface replacement, an HDD bore, or to enable
18 special construction techniques due to unusual site specific constraints, use of the workspace is
19 contingent on NWN performing the hard surface replacement, bore or other special technique.
20

21 To "Special Conditions for Temporary Laydown Area" in section IV.E, add:
22

23 5) Conditions (1) through (4) above shall apply to the temporary easements described in Exhibits
24 3,4 and 5 of the Application for Amendment 1 to the SMPE Site Certificate.
25

26 For Public Safety Condition 2(c), the Council approves the request by NWN and adds the
27 clause: "****Minimum separation requirements at 49 CFR 192 shall apply otherwise."
28

29 The Council approves amendment #1 and issues amendment #1 to the site certificate for the
30 South Mist Pipeline Extension, subject to the terms and conditions set forth above.
31

32 Issued this 28th day of August, 2003.

ENERGY FACILITY SITING COUNCIL

By: 

Dr. Roslyn Elms-Sutherland
Chair

33