Umatilla County

Department of Land Use Planning

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LAND USE PLANNING, ZONING AND PERMITTING

CODE ENFORCEMENT

SOLID WASTE COMMITTEE

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GIS AND MAPPING

RURAL ADDRESSING

LIAISON, NATURAL RESOURCES & ENVIRONMENT

May 26, 2016

Testimony to the Joint Interim Committee on Department of Energy Oversight

Co - Chairs Beyer and Holvey, members of the Joint Committee –

Thank you for the opportunity today to phone in and participate in your hearing. I present this testimony to you today on behalf of Umatilla County and the Umatilla County Board of Commissioners. The focus of Umatilla County comments is the land use and permitting role of EFSC.

First let me say that we believe ODOE staff are hard working and professional. We have utmost respect for the EFSC members and their long hours dedicated serving on the council. We believe the staff and council are earnest in their endeavor. However, the fundamental premise of EFSC and the state's role in energy facility siting is outdated and warrants revision.

You are aware of many efforts to review and study energy policy and permitting in Oregon. I share with you two such efforts that also focused specifically on the land use permitting. The historical perspective is important. As Patty Lemrick, Director for the Study of the American West, said at the Annual Oregon Planning Institute Conference in Eugene a number of years ago, "every major public policy decision should be preceded by a history lesson."

1996 Energy Facility Siting Task Force – In 1996 Governor Kitzhaber appointed a committee to answer several questions about state siting authority, and, to answer the question of whether an applicant (energy developer) should be required to demonstrate a "need" for energy. The final recommendation of the Task Force was to retain EFSC and to remove the

"need" standard. At that point in history, there were very few new energy facilities. Most were built and operated by the major public utilities. Renewable energy was a remote concept, mostly touted as a solution for individual houses and businesses rather than large or commercial scale. Umatilla County welcomed a new natural gas cogeneration plant in 1995, of which I was the Senior Planner assisting the elected Board in sharing comments during the EFSC process. That new plant was the first stand – alone, non-utility owned plant built in Oregon. In 1995, as it remains today, only three types of development are "supersited" in Oregon by a state agency, large energy facilities, publicly owned light rail and state prisons.

In 1995, the land use analysis conducted by Cogan Owens Cogan, one of the foremost planning firms in Oregon, questioned whether energy developers should be exempt from local land use processes, and, they questioned what public purpose EFSC served. DLCD staff at the time reported on the merits of the comprehensive statewide planning program that is locally administered. The Task Force, of which I was a member, decided to retain the EFSC model, at least until the markets changes. Too, the primary political dilemma was resolved when the committee found a solution to eliminate the "need" standard, which had served as a roadblock for new development.

2013 Report to the 77th Legislature on Study results and Recommendations from HB 2105.
Nearly 20 years later, under the second Kitzhaber Administration, *a* bill was adopted which directed ODOE to review its energy facility siting procedures and make recommendations on 7 issues. The issues ranged from looking at ways to encourage consistency between federal and local standards to Oregon's standards, to encouraging public participation in the design and siting of facilities. While well-intentioned, the bill missed the fundamental question, "Is there a need for state oversight and permitting." So much has changed in the energy industry since the 1995 review, and certainly since 1975 when EFSC held its first official meeting. Today, most energy generation facilities are privately owned, compared to facilities owned by public utilities and electric cooperatives. In the 1950's – 1990's most energy generation was developed by large public utilities. Plants were large, stand-alone facilities designed to serve a large target population within the service territory. Today, markets are more complex, energy is developed and exported, government programs have changed and design of systems has drastically changed. Combined, these changes have re-defined the industry and with it have brought in to question the public need for state agency oversight.

Our Story: Energy Facility Siting in Umatilla County
The contemporary wave of renewable energy development started in Umatilla County when we permitted a wind energy project in 1997. For many years, Umatilla County had the largest inventory of active wind turbines. The dynamics have changed and our neighboring counties to

the west, Gillam, Sherman and Morrow have surpassed our numbers. I refer to the 1990's and early 2000's as the honeymoon days for permitting wind projects. At least in our region, it seemed everyone was happy to see the new development and very supportive of renewable energy in general.

In 2002 Umatilla County adopted specific wind energy siting standards, based on the experience of three developments. The process included a technical advisory committee and large public involvement. Initially driven by the developers, county used the process to protect the wind resource under the Goal 5 program – a statewide planning goal. The developers hoped the Goal 5 process would ameliorate conflicts between neighboring properties with valuable wind resources. That proved to have technical and legal limitations and so the process shifted and resulted in a set of specific siting standards.

Those standards were effective until 2011 when the next wave of wind energy development came to Umatilla County. The next wave of projects were larger and more remote, certainly a greater distance to the transmission grid. Concerns were raised about impacts to farmland (particularly to prime farm ground; farm use is not only land dependent but soil dependent whereas energy facilities are only land dependent), cumulative impacts, to farmland and quality of life, health impacts and negative impacts to neighboring properties particularly residential sites.

County responded to the concerns by once again opening up the local legislative process to update the wind siting standards. County Planning Commission held numerous work sessions and hearings involving agencies, citizens, landowners with and without turbines, developers and their legal teams, occurring over a two year period and accumulation of thousands of pages of testimony, studies, technical data, and, most significantly a petition in support of a 2-mile setback between a turbine and a dwelling. The majority of the 1,200 signatures in support of a 2-mile setback were gathered over a weekend. Umatilla County population is just under 80,000. The realtor on the Planning Commission made the proposal for the 2-mile setback as a safeguard to address the impacts. There is plenty of real estate in the county with a good resource the commission reasoned, so let's protect the existing development and permit new wind.

Several folks from the renewable community were highly critical of the setback. Understandably it narrowed their opportunities and complicated the development process. I'm happy to say that just last month a new wind development completed the permitting process and is currently under construction. This is an example of local standards balancing the positive and negative components of development.

One of the standards included in the new (current) standards, was the requirement to include the transmission line with the project development. In our eyes, that was a clear and objective standard. Why, after all, would a wind development be permitted without a transmission line? Well, unfortunately, EFSC staff and attorneys took issue with our local code and is currently in the process of permitting a large wind project without a transmission line. County spent $25,000 defending the local code, only to read in the DPO that the county "was misguided" in their interpretation of their own code.

Many of the adjacent property owners were grateful for the county's effort and are disappointed that the county will not be spending more general fund dollars defending a futile position. The adjacent landowners are primarily concerned that their land may be condemned for development of a transmission line. While the developer has committed in the record to avoid that, the legal privilege remains in law. Yes, the current construct of law would allow an energy utility or cooperative to condemn land in order to provide a transmission line to a private development. Another example of outdated laws, laws and regulations that have not kept pace with the market place and development conditions.

Evaluating the purpose and role of EFSC – Options for Moving Forward and Improving permitting process and outcome.

Major development projects with significant public value and interest, are sited and permitted at the local level, not by the state. Examples include, major county highways, major county roadways, one million square feet of warehouse, 120,000 square foot data centers located on 75 acres valued at 750 million, etc. Arguably these examples are needed by the public but none required state super siting.

Avenues for modernizing the permitting process to balance interests of the state with interests of private landowners:

1. Evaluate existing laws, Administrative Rules and standards. For example, ORS 215.283(1) sets the process and standards for permitting a transmission line. The scope of standards is very limited. ORS215.283(2) includes definition of an energy facility and sets forth some state criteria and standards for permitting an energy generation project. In land use parlance, the transmission line is a "use permitted outright" and the energy facility is a conditional use where a city or county may adopt local siting standards. Question is, why would the standard for a transmission line be lower than the standard for the project? The answer lies in the history and legacy of the energy industry and the fact that statues have not kept pace with changing markets and industry.

2. Increase the threshold for local permitting, e.g. up to 500 MW may be permitted at local level, or, narrow EFSC scope to multi-state projects under FERC review.

3. Consider appointing policy Board for ODOE. All other state agencies with regulatory authority have a policy board, e.g. DEQ has EQC, DLCD has LCDC, ODFW has OFWC, ODOT has OTC. A policy board insures the process and programs are equitable and have necessary checks and balances.

4. ORS 197.180 State Agency Coordination

Oregon's Statewide Planning Program is well-celebrated for its comprehensive program for balancing protection of resource lands with permitting new development. A cornerstone to the program's success is embedded in ORS 197.180 the State Agency Coordination law that requires state agencies to "carry out their planning duties, power and responsibilities and take actions that are authorized by law with respect to programs affecting land use." Each state agency has a State Agency Coordination Program that has been acknowledged by the LCDC. The program sets out any land use matter the agency might be involved with, and, establishes protocol for state agencies to respond to local proceedings. Most state agencies have a SAC Program. Only two agencies have updated their programs since 1990, ODOT and DSL. This law and program is an important component of planning in Oregon. It effectively guarantees that state agencies will respond to local public notices and provide technical expertise where needed. This is Oregon's equivalent of SEPA (State Agency Protection Act) and NEPA (National Environmental Protection Act). An update of agency SAC Programs is long overdue, including an update of the ODOE SAC Program. Where the two aforementioned reports implied that only ODOE has the penultimate authority to permit (less Oregon Supreme Court), ORS 197.180 provides the same guarantee to local governments acting as the lead permit agency.

Conclusion

The list above highlights general policy matters and concerns. Many of these land use issues are nuanced and warrant a more focused and technical review in a smaller work group. Certainly we need energy in Oregon. But is there a public interest in overseeing private development? If so, what is the scope and purview of that authority? Umatilla County supports energy conservation, demonstrated in part by our choice to participate electronically rather than drive 400 miles. Umatilla County also supports renewable and non-renewable energy development. To that end, we believe a local process better serves area residents than does a state process. We would be happy to travel to Salem to meet with you in person or to participate in a work group to further

discuss these important issues.

Thank you for your consideration. I would be happy to answer any questions.

Cordially, Tamra J. Mabbott