



ENERGY FACILITY SITING COUNCIL

Hanley Jenkins, Chair ■ Marcy Grail, Vice-Chair ■ Kent Howe ■ Mary Winters ■ Jordan Truitt

Energy Facility Siting Council December 19-20, 2019 Meeting Minutes

Thursday, December 19, 2019 at 5:00 p.m.

Friday, December 20, 2019 at 8:00 a.m.

Red Lion Hotel – Walla Walla Room

304 SE Nye Ave

Pendleton, Oregon

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The meeting materials presented to Council are available online at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Thursday, December 19, 2019 – Pendleton, OR

Call to Order: The meeting was called to order at 5:01 p.m. on December 19, 2019 by Chair Hanley Jenkins.

Roll Call: Council Chair Hanley Jenkins, Vice Chair Marcy Grail, and Council Members Kent Howe, Mary Winters (joined at 5:07 pm), and Jordan Truitt were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Senior Siting Analyst Kellen Tardaewether, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Chase McVeigh-Walker, Operations Analyst Sean Mole, Division Assistant Michiko Mata, and Communications Outreach Cliff Voliva. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

Opening Remarks

Secretary Cornett indicated there were no agenda modifications

A.1 Boardman to Hemingway Transmission Line, Council Review of Draft Proposed Order and Public Comments

¹ **(Information Item)** – Kellen Tardaewether, Senior Siting Analyst, Sarah Esterson, Senior Siting Analyst, Maxwell Woods, Senior Policy Advisor. Council received a presentation regarding the review of the Boardman to Hemingway Transmission Line Draft Proposed Order (DPO), the comments received on the DPO and responses from Idaho Power (applicant) to comments received on the DPO. The Boardman to Hemingway Transmission Line is a proposed 500 kV transmission line, approximately 280 miles long in Oregon, that would cross five Oregon counties. Idaho Power Company is the applicant. For project details visit [Department's Boardman to Hemingway Transmission Line Project webpage](#).

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Vice Chair Grail: Explained she did not intend to vote on any council actions regarding Boardman to Hemingway. As a previous employee of Pacific Power, she has recused herself from voting on any matters regarding this item. Vice Chair Grail stepped away from the council table and joined the audience.

Secretary Cornett announced council Member Winters has joined the meeting at 5:07 pm, and we now have a quorum.

Secretary Cornett explained to council that they have flexibility on this item. If there is difference in opinion between council, and if they couldn't come to a consensus there could be value in voting regarding comments. Council has used the "action" opportunity, but it's not required. ODOE's recommendation is for Council to provide any recommendations item by item, and not wait until the end of the agenda item.

Chair Jenkins asked if everyone agree with that process.

Council all agreed.

Chair Jenkins requested that Ms. Tardaewether ask the council if they have any questions/issues as they finish presenting each section.

Ms. Tardaewether agreed to do their best.

¹ Audio for Agenda Item A.2 = 00:00:20 – December 19, 2019

Council Member Winters asked where were the staff's responses to the comments in the table?

Ms. Tardaewether explained that staff had reviewed all of the comments but had not yet responded to them. The responses to comments will be included in the proposed order when that is issued. The table is being used as a guide for this presentation.

Council Member Winters asked if we know if the proposed responses to comments are adequate?

Ms. Tardaewether stated that responses to comments will be included as another column to the table and will be attached to the proposed order when that is issued.

ROADS

Council Member Winters asked if any issues have come up in other energy facilities whether a road leads to the facility and has been substantially modified, that EFSC would have their own definition other than the applicant's definition?

Mr. Woods responded it is obvious when a new road would need to be constructed, and it would clearly be part of the facility or clearly not. For example, I-84, every project built uses the freeway to move things around and that is not considered part of the project. On the other hand, new wind projects require new roads to be built to access the turbine locations which are part of the project. This project is different because a large number of access roads already exist. Our staff worked closely with other agencies to come up with a reasonable interpretation of what was substantial modifications to existing roads. If over 20% modification of the surface area of the road is needed to make it useable then by our definition that is substantial modification. However, if there is one stretch with a small pot hole that needed fixing, we would not consider that a substantial modification. The process of how we defined this is in the application materials.

Council Member Winters - So we hadn't done this before. I understood the OAR didn't have a definition, just surprised we hadn't done this before in other cases.

Mr. Woods said normally it's self-evident if the road is considered part of the facility or not. He then referenced the Boardman Solar project, and how there is a public road that is not part of the facility, but then a spur road that is part of the facility.

Council Member Winters - I know when you do construction for the purposes of ADA, such as including curb ramps, there is case law about what constitutes reconstruction or substantial construction. Is there anything similar in state law to what substantial construction means?

Mr. Woods replied that the agency has stayed specifically in the ORS' & OAR'S that are applicable to EFSC's standards, and then came up with what we thought was a reasonable proposal.

Ms. Tardaewether referenced attachment B-5, the Road Classification Guide and Access Control Plan, and that this is a good resource specific to types of roads with map sets. This is important because it's also used in exhibit P-3 or 4 under Fish and Wildlife, which is used to measure impact with Elk and Sage Grouse.

Council Member Howe said he understood that when there is over 20% improvement then it's considered substantial modification to the road. However, he did not understand the second bullet related to 71%.

Mr. Woods explained that it was utilized for impact assessments. The amount of modification to the road corresponded to environmental impact. If it was over 71% there was a greater area of impact/disturbance assumed. It was a way to use that data to calculate the environmental impacts.

Chair Jenkins indicated that some of the routes are rather lengthy. Did the applicant provide evaluations of specific segments of these lengthy routes?

Mr. Woods replied yes, they did. It's node to node as he recalled, and a segment is defined. A stretch of road between other points connecting to another stretch of road. Then reviewed the map on the presentation materials showing what a segment would be, and a node.

COUNCIL REVIEW OF DPO PROCESS

Secretary Cornett explained to council that the purpose of this phase of the review process is to convey as much information to council that was in the draft proposed order that staff thought council would be interested in, also to evaluate comments and solicit comments from council. If council would like ODOE staff to provide this information in any other way that would be more helpful, then they would need to let staff know.

Chair Jenkins responded that it's best to keep marching through and see if the current format works for them or not. If not, and a modification needs to be done for January then great, we'll make those changes then. Chair Jenkins also commented that there are only 4 council members involved in this item, and there is a lot of burden on the 4 council members.

GENERAL STANDARDS OF REVIEW

ORGANIZATIONAL EXPERTISE OAR 345-022-0010

Council Member Winters commented that there were a lot of comments regarding wild fires, and obvious concerns specifically with power lines. She understood they outlined what their program was, but what do we feel our internal ability to assess their programs are today, not five years ago. Council Member Winters commented that she's familiar with assessing fire risk in Central Oregon, working with experts. Council Member Winters asked if the department had internal experts or external experts to review what the applicants have submitted as this is a highly legitimate concern.

Ms. Esterson responded that the applicant is required to use Division 21 requirements when submitting their application and the organizational expertise exhibit requirement references public health and safety. However, the organizational expertise informational requirements are about qualifications and experience and do not really speak to any risk. The applicant did speak about their operations and maintenance experience in terms of the program which addresses wild fire risk.

Council Member Winters explained that cities are starting to look more at Statewide Planning Goal 7 – Areas Subject to Natural Hazards and the implications for fire safety risk. This is something we may have the ability to look at as part our review.

Ms. Tardaewether responded that as Sarah indicated, there is the public health and safety component of the organization expertise standard. The other location in the draft proposed order where this issue is discussed, and there is a condition associated with a fire prevention plan, is the Public Services standard. The council's Public Service standard, which will be covered tomorrow, is limited in talking about minimizing/avoiding impacts to public service providers, including fire safety providers. However, the Council doesn't have a specific wild land fire evaluation standard. There is not a perfect fit for this issue, so it's being fit in with the public services with the existing conditions and through the organization expertise because it's associated with the public health and safety. Everything related to fire is found in these places. The applicant has also submitted a TMIP (Transmission Maintenance Inspection Plan), which is another resource that has fire safety information. Part of the internal discussion is to bundle all this information together to make sure everyone can better understand this issue.

Council Member Winters explained that there is construction activity blasting, and then there is the on-going maintenance, which are two separate concerns.

Ms. Tardaewether replied again that they would be in one place associated with that issue.

Secretary Cornett mentioned that the council is limited to what is in the Council's rules and standards, and if comments are raised that are outside of those, the Council is unable to evaluate those comments.

Council Member Winters asked about the types of expertise staff can rely on when conducting their review.

Secretary Cornett indicated the department staff has lots of knowledge and expertise, but they are not experts in everything. Staff first relies on reviewing agencies including counties, cities, state agencies and tribal governments. The department also has master contracts with consulting firms should we need additional expertise. For the Boardman to Hemingway project Council has previously appointed two consultants.

Ms. Tardaewether explained the Oregon Dept of Forestry is a reviewing agency for this project and included a comment letter stating they feel the proposal is consistent with laws and statutes.

Mr. Woods added that there is also a risk to the project from fire. Utilities are aware of and working hard with other agencies regarding fire safety. There is a lot of planning in regards to these issues. Utilities are investing in different ways to prevent or detect fires such as surveillance cameras being installed in fire prone areas. However in forested areas most of the prevention effort relate to keeping the right-of-way clear. This prevents fire from getting to the infrastructure itself. The only down side to vegetative maintenance is the wider the path cleared, the bigger the potential impact to natural resources, but that is the tradeoff made.

Chair Jenkins asked since the BLM decision affected the Blue Mountain National Forest, is there any opportunity to look to that decision for how they dealt with fire issues.

Ms. Tardaewether - The Forest Service did issue a record of decision (ROD) and the department was a consulting agency. However, that information is not part of the Council's record.

Mr. Woods - Fire management is part of the Forest Service responsibility in conjunction with their lease holders, which is Idaho Power. The segment that goes through the Wallows has already been authorized to use the land for the transmission line. That is the reason the transmission line is where it is, because that's where the Forest Service chose to put it, in conjunction with the BLM.

Ms. Esterson explained that the department is aware of the fire mitigation plans that are coming out of California and other public utilities, and what they look like. While the record was still open, we communicated frequently with Idaho Power on understanding where different information regarding fire safety was in the record because it was in many locations. The plan for the proposed order at this point is to take the fire suppression plan Idaho Power has proposed and pull in the information from the vegetation maintenance plan and the right-of-way clearing, along with all the other items that address fire risk. In addition, in one of Idaho Power's responses they are working on a fire mitigation plan that uses modeling for assessing fire risk and come up with actions they may need to do.

Council Member Winters asked if we've looked at land use authority of the counties?

Ms. Esterson responded yes, absolutely.

Secretary Cornett commented that clearly there is some interest in these areas, that council may want to make some comments to staff. He just doesn't want to lose track so procedurally, council should provide any comments or questions to staff as we are going through these items.

No other questions or comments regarding Organizational Expertise OAR 345-022-0010

STRUCTURAL STANDARDS OAR 345-022-0020

Chair Jenkins called a short break at 7:12 pm to get the phone back online.

Chair Jenkins called the meeting to order at 7:20 pm.

No questions or comments regarding Structural Standards OAR 345-022-0020

SOIL PROTECTION OAR 345-022-0022

No questions or comments regarding Soil Protection OAR 345-022-022

Secretary Cornett confirmed with council if the current format worked for them.

Chair Jenkins replied that they are familiar with their standards, it's good to do the overview based on those standards, and he was comfortable with the current process as presented.

Council Member Howe asked if the department wants Council to stop when they have a question, or if they want to reference back to it later.

Secretary Cornett indicated the department would like the council to stop and ask when they have questions or want to provide comments. It's too complicated to pull all the details at the end and doing it as we go is best.

Council Member Winters agrees, and the format is good based on the criteria. Sometimes when there is a significant amount of comments, looking through a large pdf is difficult to search. She would like to look at the comments as the Department is presenting them. If we could help identify or have it on the screen that would be helpful.

Ms. Esterson asked Council Member Winters if she would like staff to revisit wild fire and land slide slope stability in the terms of comments and applicant response, such as showing it on the screen as a refresher tomorrow.

Council Member Winters said she would like to be comfortable with land slide and seismic hazard criteria. Issues with the alternatives and if it was met.

Ms. Esterson said they can certainly do that.

Ms. Tardaewether asked for clarification on what Council Member Winters was interested in seeing.

Council Member Winters explained probably DOGAMI's responses are most important on this issue.

Council Member Howe stated that we should probably not limit wild fire just to forest lands, that he believes there may be an issue with range fires as well.

Meeting adjourned at 7:34 pm

Friday, December 20, 2019 – Pendleton, OR

Call to Order: The meeting was called to order at 8:03 a.m. on December 20, 2019 by Chair Hanley Jenkins.

Roll Call: Council Chair Hanley Jenkins, Vice Chair Marcy Grail, and Council Members Kent Howe, Mary Winters, and Jordan Truitt were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Senior Siting Analyst Kellen Tardaewether, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Chase McVeigh-Walker, Operations Analyst Sean Mole, Division Assistant Michiko Mata, and Communications Outreach Cliff Voliva. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

Opening Remarks

Secretary Cornett indicated there were no agenda modifications.

B. Consent Calendar² – Approval of minutes; Council Secretary Report; and other routine Council business.

November Meeting minutes: Vice Chair Grail wanted to make sure it's reflected that she is available for the 2020 July/August meetings. Page 4 of the November minutes.

Council Member Howe move that the Council approve the minutes of the November 21-22, 2019 meeting as presented with the modification that Vice Chair Grail is available in July/August.

Council Member Truitt seconded the motion.

Motion carried.

Project Updates:

- Summit Ridge Wind Farm Amendment#4: At the August meeting Council evaluated and denied the Contested Case request and issued a final order granting an extension to the beginning and ending construction deadlines. As part of the decision process there is an opportunity to submit requests to the Council for reconsideration. Within that time frame the department received three requests for reconsideration from The Friends of the Columbia Gorge/Oregon Wild/Oregon Natural Desert Assoc/Central Oregon Land Watch/East Cascades Audubon Society (all one request), Fuji and Jim Kreider, and Irene Gilbert. Council has 60 days from the date of receipt to take formal action, which could be to reconsider or to deny the request for reconsideration. If Council does not take action, then the request is denied by default. Staff is still reviewing but will be working with Chair Jenkins if this should be brought to council at the January meeting.
- Madras Solar Energy Project: The Department recently received the preliminary application for a site certificate. The project is in Jefferson County about 5.5 miles west of Madras, would occupy 284 acres and have a generating capacity of 63 megawatts. The application is in the review for completeness stage, the full application is available for review on our website. Council may access it online or request another format if they would like to download the information to their surfaces.
- Shepherds Flat Central Request for Amendment #2: The amendment was approved by Council at the October council meeting. The amendment was to swap out the existing turbine blades on two turbines with longer blades. Our compliance officer Duane Kilsdonk has been out on site to conduct an inspection and confirmed the blades have been swapped out.
- Wheatridge Wind Energy Facility: This was originally approved as a wind project and there have been amendments to add battery storage and solar. The developer must begin construction by May 2020 and

² Audio for Agenda Item B = 00:03:00 – December 20, 2019

plans to begin in January 2020. The project was originally approved for 292 wind turbines in Morrow and Umatilla counties. They are currently planning to only construct 120 of the wind turbines at 499 feet tall each for a total of 320 megawatts and all be in Morrow County.

Council had no questions regarding project updates.

Land Conservation and Development Commission (LCDC) Rulemaking:

LCDC is working on rulemaking that would allow local decision makers in Morrow and Umatilla Counties to designate a corridor as the preferred location for new transmission lines. This is a recommendation that was made by the Governor's Advisory Committee, which met in 2015/16. Maxwell Woods is currently participating in the committee, which has met twice. The idea is that LCDC would establish enabling rules that Morrow and Umatilla county could use to go through their own long-range planning project to update their land use regulations. More info will be provided as the project moves forward.

Chair Jenkins stated that he was an advocate for this to happen over 10 years ago, and he is very glad to see this is happening.

Oregon Public Utility Commission (PUC) Rule Making:

Mr. Cornett is deferring to Legal Counsel Patrick Rowe to provide a brief overview.

Mr. Rowe explained that the PUC rule making is looking at their certificate of public convenience and necessity (CPCN) rule, which is needed when an energy facility developer needs to condemn land if they don't have access to a piece of land, and the owner isn't providing access. The CPCN rules haven't been amended in over 30+ years, so they are reviewing those rules currently in stakeholder workshops. It's only a draft and in the workshop stage as of now, but there is a large interest and participation by the utilities like PGE, and PacifiCorp. January should be the last workshop.

Future Meeting Dates:

January 23rd & 24th: Hood River, Oregon

This could potentially be a one-day meeting depending on the agenda items and depending on this meeting and if we need to continue the B2H agenda item. All council members are available.

March 12th & 13th – Location to be determined

All council will be available, Mary said Thursday's are hard, but will do what she needs to.

April 23rd & 24th – tentative, but Marcy is the only one not available.

February is the timeline we are looking at for confirmation of a new Council Member.

C. [8:23 am] Shepherds Flat North Request for Amendment 2 – Council Final³ (Action Item) – Chase McVeigh-Walker, Senior Siting Analyst. The Council reviewed the Proposed Order on Request for Amendment 2 of the Shepherds Flat North site certificate. Request for Amendment 2 sought Council approval to install longer turbine blades on the existing towers, known as wind turbine repowering. The repowering would also include the replacement and modification to associated machinery including the rotor upgrade (replacing the hub casting), modification to existing nacelles roof, and installation of a new gearbox and bedplate in the nacelle. The amendment request also sought approval to utilize previously approved areas of temporary and permanent disturbance (access roads and crane paths). The amendment request was being reviewed under the Type B amendment review. For project details visit [Department's Shepherds Flat North Project webpage](#).

³ Audio for Agenda Item D = 00:19:23 – December 20, 2019

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Chair Jenkins stated the original blades that are on the turbines now do not go up to 150 meters but were authorized up to 150 meters.

Mr. McVeigh-Walker responded that is correct, currently the max blade tip height of the built turbines is 135 meters. The increase would push them up to the authorized 150 meters.

Mr. Woods stated that the applicant is using the same site boundaries and footprint. They are using areas that are already established so there are no new areas of disturbance.

Chair Jenkins stated the staff report talks about an upright analysis, but the condition says up-rate. Which is correct?

Mr. McVeigh-Walker responded that “up rate” is correct, and that the staff report was incorrect. The condition is correct.

Vice Chair Grail stated that in the staff report it talks about the staff recommending inspection of the turbines and components within 6 months, and asked who was responsible to complete the requirement for staff to check? Is this something Duane [Kilsdonk, Department Compliance Officer] follows up on or does the applicant/developer complete this, then let the department know it’s done?

Mr. McVeigh-Walker responded that in condition 62, that would be the certificate holder’s responsibility.

Chair Jenkins asked if that was reported to Duane? He believed that is what Vice Chair Grail was asking.

Mr. Woods responded that it could be, that it doesn’t specifically say they have to reported to the department. We’d have to make a change if we want the applicant to report back within the 6 months.

Chair Jenkins asked Vice Chair Grail what she thought.

Vice Chair Grail responded that it’s something we should confirm, but if it’s not a change to the current process it’s not necessary to change it. She just wanted to understand the process.

Council Member Howe asked if Staff could describe what an up-rate foundation is or means.

Mr. Woods responded that he is not a structural engineer for turbines, but he will explain what he understood it to be. Mr. Woods referenced Stateline, and how it was the same. They are basically structures with existing foundations built a couple years ago. The inspection of the foundation is to verify it can support the larger blades and equipment.

Vice Chair Grail stated that Gillam county asked about land owner notification. That she would like to confirm what happens with the land owners with these types of projects. Do land owners still get notification of this type of change?

Mr. McVeigh-Walker responded that the department does have a special mailing list of people requesting notices related to the project and notification requirements to adjacent property owners. Property owners that are impacted by this amendment are getting notices.

Mr. Woods also responded that the department sent out two public notices at the time of the draft proposed order being released, and at the time of the proposed order being released. They go to the general list (those who request all Council notices), special mailing list (those requesting notices on the specific project), and the adjacent property owners list.

Vice Chair Grail thanked Mr. Woods and apologized for any redundancy.

Council Member Howe referred to waste minimization. Are the blades aluminum or fiberglass and can they be recycled, or do they need to go to the landfill?

Mr. Woods turned to the site certificate holder asking to confirm if the blades are steel or fiberglass. Shepherds Flat Central representative confirmed they are fiberglass.

Mr. Howe asked again if the fiberglass blades were recyclable. Shepherds Flat Central representative explained that it depends, but typically the blades get cut up, and disposed of at a land fill.

Mr. Woods explained condition 114 is the same one in Stateline's amendment, which received an approval to repower 6 months prior. It is to encourage applicants/developers to reuse or recycle whenever possible. The other option is the certificate holders repurposing the blades for other developers. Mr. Woods explained that the department couldn't mandate the certificate holder to recycle, but we could encourage them to do so whenever possible.

Chair Jenkins asked if staff proposed in the draft proposed order that a transportation system plan be prepared as part of a condition?

Mr. McVeigh-Walker confirmed that was correct.

Chair Jenkins stated the departments evaluation was that the level of activity associated with the amendment didn't rise to the level of needing a transportation system plan, but instead to do a road use agreement with both counties (Gillam and Morrow), and that this change was reflected in the proposed order.

Mr. Woods and Mr. McVeigh-Walker responded that was exactly right.

Chair Jenkins responded that this is why we have the elimination of condition 108 and the supplement to condition 67 is so we can assure there is a road use agreement with both counties addressing any impacts from the amendment to their road systems.

Mr. Woods responded that was correct, and that both counties asked specifically for the road use agreement but did not ask for a transportation system plan.

Chair Jenkins explained that the standard ODOT transportation plan trigger, which most counties have adopted, says unless the trips exceed 400 trips per day it's not necessary to develop a transportation plan.

Mr. Woods confirmed the certificate holder anticipates 216 trip per day is their estimated max trips.

Conditional Use Permit Amendment Issue

Mr. Woods indicated that staff and the certificate holder had a difference of opinion about whether an amendment to Gilliam County's conditional use permit was required as part of the site certificate amendment. Mr. Woods stated that while the department continues to recommend that an amendment to Gilliam County's conditional use permit is required, staff wants to be fair in providing Council with both positions.

The original approval was in 2008 and Gilliam County has since updated its land use ordinances. They now have specific set-back criteria regarding wind facilities that are different than what was in place at the original

approval. Several turbines do not currently comply with the updated setbacks and others may not meet the new setback if the blade lengths are increased. The specific setback in question requires a minimum setback of 150% of the total turbine height from federal transmission lines. There is a Bonneville Power Administration transmission line at the south end of the project. The new language allows the developer the ability to seek a waiver from the setback from Bonneville Power.

The question is, “Does that new code apply?” Mr. Woods explained why this matters, and the department acknowledges there is confusion within Gillam County on when an amendment to a CUP is required.

Council Member Winters stated that the Department’s condition said they shall pay the requisite fee, and obtain a zoning permit, conditional use permit without any local proceedings from Gillam County for facility modifications. Council Member Winters asked why we say without any local proceedings?

Mr. Woods explained that this language will always appear in a site certificate because Council is a consolidated review process for local permits. Local proceedings are not allowed for any facility under EFSC’s jurisdiction per statute, and that today’s proceedings are the proceedings for a local use permit under the consolidated review process.

Council Member Winters stated that if this was statutory, why did it trigger other things under the conditional use permit? Referring to the ancillary waivers, why would they have to do that if this is under our jurisdiction.

Mr. Woods stated the County was unclear in their responses to the department in regards to if they themselves would have required an amendment to the land use permit. All local proceedings normally associated with any local land use review are eliminated because the Council’s review takes the place of them. There are no additional public notices or hearings that the County would hold if the CUP amendment was necessary. If Council decides that an amendment to the CUP is necessary for the proposed changes, and if they choose to authorize that CUP, the County must issue it. That matters because if it is an amendment to the CUP then the new code provisions that the County adopted a couple years ago come into effect.

Council Member Winters stated that this is hard to follow without seeing the entire code, but that a conditional use permit allows the use. If we say we are allowing the use regardless if it must be amended or not it’s under our jurisdiction from a land use perspective, she is not understanding how that would trigger a zoning code. There is the basic law, the goal post rule that you can’t go back in time. The fact that there was a new application, she just didn’t understand why it would trigger a zoning code from what was before.

Chair Jenkins explained that even though this went through the EFSC process for the initial project, the County had to grant a CUP. The statute said that they can’t conduct the local process because EFSC provides the process. The County issued a CUP and collected a fee. Now there is an amendment that has come in proposing a change to that CUP. The question is does the County’s code clearly identify when a change occurs if the applicant must go through the amendment process. Article 7, section 7 identifies some criteria to evaluate whether an amendment is needed. Staff has also gone back looking at the enabling legislation for conditional uses. Based on that they believed this is a change to the conditional use permit, and therefore the certificate holder needs to get an amendment to the CUP and meet the current standards for the repowering. If they can’t meet those new setbacks, then there is a way to get the waiver. That is what was being proposed to Council. There is the administrative process of revising the conditional use permit at the local level, and then there is our process which includes the County’s regulations.

Chair Jenkins asked Mr. McVeigh-Walker if Gillam County provided the department with an assessment. Whether or not this required an amendment to the CUP.

Mr. Woods responded that they gave the department an unclear response that could be read either way.

Council Member Howe stated that the way he understood it, any turbines that did not meet the new setbacks were pre-existing, lawfully established, nonconforming structures. The conditional use preamble language (Gilliam County Zoning Ordinance 7.010) stated that alteration of a structure shall conform with the requirements for a conditional use. It has provisions further down (Gilliam County Zoning Ordinance 7.020(T)(7)(c)(2) that interprets how that preamble is implemented. When you look at the specifics of the proposed change, it's not increasing the impact on agricultural land or an increase of land area taken out of agricultural land production. No new turbines being proposed, but the question he had was does this increase the generating output by more than 25%?

ODOE staff and Chair Jenkins confirmed that the change would not increase the generating output more than the 25%.

Council Member Howe explained that in his reading of it, the proposed change triggered the preamble language. Chair Jenkins agreed that was one way to look at it, and he wasn't advocating either way. However, the other way to view this is there was a reason Gilliam County amended their code to address the set-back requirement issue. Why they increased it to 150% next to federal power transmission lines, and if that was the result of testimony from the BPA and whether they were concerned about the repowering of this facility. We are in the safety business, and there was a reason why the county amended the code recently. Mr. Jenkins speculated that BPA may have been involved in that public process to increase the set-back from 110 to 150%. The reason Council and staff get involved in this is because there is the question whether this is an amendment to a conditional use.

Council Member Howe stated that no amendment is required if an expansion of the generating capacity is due to technology upgrades installed within the existing boundaries. Would this be considered an expansion of power generating capacity?

Mr. Woods explained that peak capacity would not change as he understood it. The value of repowering is to generate more power at lower wind speeds, so efficiency. The certificate holder can get more power at lower wind speeds, and more consistent output without necessarily changing the peak capacity. So how you interpret the expansion of the power generating capacity, not sure.

Mr. Woods explained that the existing boundaries are clear, and they are not expanding or changing those boundaries.

Council Member Winters asked if the county is not willing to be clear and tell us what they meant, then to her it is a straight forward interpretation of the code, and to speculate what they did and why. It's really their prerogative to tell us, but if they haven't then the general laws that specific controls over the preamble. As she reads it, they have a specific provision on when you have to amend a CUP. By staff's interpretation, her concern was that the smallest change to the structure would trigger all the new criteria. That if that is what the County wanted, they need to say that, and she is not seeing that is what they meant. Usually if a local government wants that, they will say it.

Vice Chair Grail asked if we could go back to get clarification from Gilliam County on their zoning ordinance?

Chair Jenkins, Council Member Winters, and Mr. Woods said that we did and they provided an unclear response on page 32.

Vice Chair Grail stated just to be clear, there is nobody here from Gilliam County.

Chair Jenkins replied that we can't open the record.

Mr. Woods stated that if council agreed with staff's recommendation that an amendment to Gilliam County's CUP was required, then condition 110 would apply. If Council decided the alternative, then condition 110 would not apply.

Chair Jenkins stated that there is an existing condition includes previous setback requirements, so even if we eliminate condition 110, there still is a condition with the previous set back requirements.

Mr. Woods responded that was correct.

Chair Jenkins asked is that language inclusive enough?

Mr. Woods explained that it's condition 40.

Mr. McVeigh-Walker concluded his overview regarding the substantive changes made in the proposed order from the draft proposed order and opened the floor for discussion.

Chair Jenkins asked if the tribes request for an onsite monitor was not recommended because there were no changes or new areas being disturbed.

Mr. McVeigh-Walker confirmed that was correct.

Chair Jenkins referred to the Land Use issues or any other parts that the Council needed to decide on, asking Council if they had any further questions or wanted to discuss any of the issues further.

Vice Chair Grail stated that she was listening to Council Member Winters, and it made logical legal sense. She had a problem with the BPA line business. She was bothered that the county was not clearer when the department made the request. The BPA line really bothered her from the safety standpoint such as ice throw, fire safety, and other safety things. We must be considerate of our EFSC standards, but on a legal perspective she wasn't sure how we uphold that. That is her concern from purely a safety perspective. For the record Vice Chair Grail stated "I'm disappointed that Gilliam County would not provide more specificity over what their intention was related to that change".

Mr. Woods discussed that the department let the County Planner know what the recommendations in the proposed order were. That Mr. McVeigh-Walker had been in close contact with Michelle Colby, Gilliam County Planner. That the department has asked the question trying to get an interpretation on this and their response is on page 32. Staff talked about it, thought about it, and went back and forth, then decided to go in the direction we have presented to Council. We've informed the County of the department's plan of action, and the County's response was "okay". Mr. Woods mentioned this to ensure Council that the County has been fully informed on what was going on.

Vice Chair Grail stated that she saw the certificate holder's response regarding why they didn't agree. Just to note that I have read their response.

Mr. Woods explained again that the department wanted to be fair and let council know of the disagreement and share arguments from both sides.

Chair Jenkins stated that he was frustrated, and as his history of 36 years being a county planning director, I would have required this to be an amendment to the CUP. To him this is a substantial structural change, and a safety issue here, and he believed the County updated their codes based on safety. That he could go either way on this issue, but it's the Council's responsibility to consider safety. There is the route of getting a waiver from the BPA, whether they would grant that, he didn't know.

Council Member Winters - I just keep going back to this is just not how she read their code, especially without the county explaining how they read their code. The County has specific CUP amendment language for wind facilities and none of those are met. This language seems to be their intent of when an amendment to a wind conditional use permit is required. They have preamble language that is general. However, if that is the controlling language, any modification of any kind would require an amended CUP. If the County told us that is what they intended then she would defer to the County, and request they show a finding, or what their intent was in writing this provision. She understands this is EFSC jurisdiction, but when applying local codes, she was uncomfortable in reading the code without informing the County how it was read.

Chair Jenkins agreed with Council Member Winters.

Council Member Truitt stated that if you have a nonconforming use, it can stay nonconforming if it doesn't change, in terms of real estate. However, I'm torn because its nonconforming and it should have to comply with the new standards if it's modified. What language is controlling is not clear.

Council Member Howe agreed with Council Member Winters, and stated the preamble was general and the specific language should be controlling on whether an amendment to the CUP is triggered. He was curious about the waiver from Bonneville.

Chair Jenkins responded that if you recognize this as an amendment to the County's conditional use permit, the Department, in the recommended approval condition for the draft proposed order, has included the ability to seek a waiver rather than meet the set-back requirements that the County has recently imposed.

Council Member Truitt asked if issuing waivers set a precedence?

Chair Jenkins responded that he was not worried about that because the turbines are nonconforming structures. That's a typical process associated with a nonconforming use.

Council Member Winters asked that if we ask them to seek a waiver then what were we accomplishing from a safety perspective.

Chair Jenkins responded that they would be getting an evaluation from the BPA that they find there is no risk or minimal risk with those existing turbines that are being repowered.

Council Member Winters responded that then if the BPA didn't grant the waiver then they can't proceed with the repowering.

Chair Jenkins commented that Council Member Winters was correct, and that the denial of the waiver wouldn't affect the certificate holder's existing production, just that they couldn't repower the 9 existing turbines.

Secretary Cornett stated that in terms of a precedence, this is entirely Gilliam Counties ordinance, so there is no precedence for this issue regarding other repowering requests in other counties. What Council is struggling with is how to apply those within the context of EFSC land use standards. The ability to get the waiver is not an EFSC standard, it is the local land use standard created by Gilliam County.

Chair Jenkins asked to explore the nonconforming use approach that Mr. Truitt referred. Several turbines are currently nonconforming structures because the County's updated codes.

Secretary Cornett stated that not all the turbines are nonconforming with the updated codes. The base use is a wind facility that is allowed within the Exclusive Farm Use Zone. The use is not nonconforming, but because of the new set-back requirements, several of the turbines do not conform to the new setback.

Council Member Winters stated with local code provisions, sometimes we get the distinction between conforming use and nonconforming structure. In this circumstances only a limited part of the structure is now nonconforming due to the change in the set-backs, the rest of the structure is fine as permitted.

Chair Jenkins stated that with the amendment some of the turbines would become nonconforming.

Secretary Cornett stated that the ones that were already nonconforming become more nonconforming, and 3 more would go from conforming to nonconforming of that 150% set-back. However, the evaluation of these turbines was only done through on a desk top evaluation.

Chair Jenkins asked what the County's code said about increasing the nonconforming use.

Secretary Cornett stated that the department didn't investigate the County's nonconforming use provisions.

Chair Jenkins stated that Council may have a conflict between what the County's code says and what is required for an amendment verses what the County's code says for increasing nonconforming use.

Council Member Winters stated that we didn't look how it applies to wind facilities. Usually the provisions are general for normal uses, but they didn't look at those code provisions. That the County probably had them.

Council Member Truitt commented that the County didn't respond, and there hasn't been adequate communication from them.

Chair Jenkins explained his experience with nonconforming uses and the proposed amendment would trigger some sort of evaluation of a nonconforming use.

Council Member Howe stated the code has provisions when an amendment to a wind facility is required, and the proposal does not trigger that.

Chair Jenkins stated that if the Council went that way then there needed to be more discussion on applicant's response to not requiring an amended CUP.

Secretary Cornett indicated the two remaining issues. 1) Condition 62 brought up by Vice Chair Grail and 2) whether or not an amendment to the Gilliam County CUP is required. Secretary Cornett requested time for staff to make the necessary changes to condition 62 and requested Council deliberate and provide direction to staff on the second issue.

Chair Jenkins stated that Council Member Howe and Council Member Winters agree that an amendment to the CUP is not necessary. Anyone else support that?

Mr. Woods commented that for awareness he found the nonconforming use article code of Gilliam County, which is approximately 19 pages, and he hadn't had the opportunity review it. He wasn't sure if it would provide any clarity, but there is some information regarding article 7 that is specific to wind turbines. He could look in to it and update Council later in the agenda if they would like.

Chair Jenkins asked where did that fit as far as evidence is concerned?

Council Member Howe said the question is whether the Council would determine if an amendment is required or not verses whether we dig into nonconforming use or not. Is that our role to get into the nonconforming aspect?

Chair Jenkins replied that yes it was our role to implement the local requirements. The question is if it requires a change to nonconforming use then you must go back through the conditional use process, but maybe the County's code doesn't require that. If it does, does this section identify when an amendment is necessary? Council may need to wait until Mr. Woods has a chance to review what is in the code. Chair Jenkins recommended allowing staff the time to review the code and asked if Council agreed.

Council agreed.

Secretary Cornett requested to modify the agenda to postpone this item until after Agenda Item D (Rulemaking) or Item A.2 (Boardman to Hemingway).

Chair Jenkins stated he'd like to try revisit after Rulemaking to keep it fresh since the Boardman to Hemingway could take a while to get through. He asked if Mr. Woods needed more time to let them know.

Chair Jenkins officially postponed this agenda item until after Agenda Item D - Permanent Amendment Rulemaking – Council Review of Public Comments.

Break at 9:56 am

Adjourn at 10:20 am

D. [10:20 am] Permanent Amendment Rulemaking – Council Review of Public Comments⁴ (Information Item) – Christopher Clark, Rules Coordinator. Council considered testimony received on the proposed permanent rules for the Site Certificate Amendment Process. For more information about Rulemaking visit the [Agency's Rulemaking Page](#)

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Vice Chair Grail asked Mr. Clark if the department could provide an example of a time where a change in the site certificate boundary has not triggered an amendment?

Mr. Clark responded that he couldn't remember the exact name of the facility, but it has happened at least once to his knowledge.

Mr. Woods described how this was done related to the Mist Underground Natural Gas Storage facility. Amendment 11. After Council approved the facility amendment in 2016, NW Natural requested a change request for a construction lay down yard. This was to utilize an existing parking lot used by a logging company adjacent to the approved site boundary, but outside that boundary. After an evaluation, staff determined that it did not trigger an amendment based on the existing amendment rules.

Vice Chair Grail thanked Mr. Woods for his response, because it is important to have examples were identified so that the public knew this isn't something that happens frequently, but it can happen.

Secretary Cornett stated there are very few circumstances that this would apply, but staff evaluated the proposal by NW Naturel under the "three could's" (OAR 345-027-0350(4)(a)-(c)) to determine whether an amendment was need. The answer to that evaluation was no, which is why the amendment was not

⁴ Audio for Agenda Item E = 01:54:08 – December 20, 2019

triggered. However, the certificate holder was required to put the information in their annual report of exactly what they did so it is on record.

Mr. Clark added that in the 2017 rules these type of changes would have to be included in their annual report and evaluated by staff. Now these types of changes must be brought to staff for determination before they occur.

Secretary Cornett stated that for a type B amendment determination request, only the certificate holder can raise staff's determination to council for their review and determination. If it is an amendment determination request on whether or not an amendment is required, then a Council member could request that, or the certificate holder can raise it to Council for their review and determination. He brought this up because when they did the initial rules in 2017 there was a lot of discussion around this, and this was ultimately what Council decided.

Chair Jenkins, referring to the elimination of the initial public comment period when an amendment request is submitted, stated they did this because they wanted to give the public the opportunity to react to a complete application, and not have a moving a target that was incomplete. The Council felt it was important the public evaluate a complete application.

Secretary Cornett stated the prior rules required that the department had 7 days to provide public notice upon receiving the request for amendment. As amendments have gotten more significant, they have gotten increasingly more incomplete. Also, there was no draft proposed order phase, it went straight to the proposed order phase. The departments assessment was by adding the draft proposed order stage, that was a more appropriate point for the public to comment because it was based on a complete amendment request and staff's initial recommendation. Also, in type A amendment review the draft proposed order hearing must occur in front of Council. This was the tradeoff of eliminating the initial comment period. However, if the Council wants, the department could provide notices of the request for amendment for information purposes, but without an additional public comment timeframe.

Council Member Winters responded that she agreed with Chair Jenkins that we would want a complete application to eliminate the moving target. She also felt that interested parties and neighbors get a bit suspicious when they think something is already a done deal when they knew nothing about it. In Land Use a technique of a neighborhood meeting is often used, where the burden is on the developers to inform and meet with the neighbors of their intentions, relieving the agency of getting in the middle of any controversy. Council Member Winters was in support of an early notice so the public doesn't feel like there was too much done between the agency and the applicant because they were unaware. She asked what that would look like.

Mr. Clark replied that the current notice requirement for a preliminary amendment request is to post it on the project page. Additionally, the Department could send out an email through gov delivery and mail/email it to the special mailing list for the project.

Secretary Cornett added that it would also include the adjacent property owners.

Ms. Winters asked what the rest of Council thought about that.

Chair Jenkins responded that he thought it provides value, but my concern is that it doesn't provide opportunity to give a public response.

Ms. Winters stated that is what the purpose of the neighborhood meeting would be for. The public would have to meet with the developers.

Mr. Clark stated that there was a rule that was eliminated in 2017 which said the department had the option to hold a meeting. Mr. Clark would have to investigate the history further, but he wasn't sure if this was an actual hearing or an informational meeting. Council has the option to reinstate an optional information meeting during that stage of the process.

Ms. Winters and Chair Jenkins responded that they thought this would be a good idea if it's optional.

Mr. Clark state he would further assess and bring language to the January 2020 meeting, and discuss again.

Vice Chair Grail, asked about comments regarded contested cases and asked Mr. Clark to identify any reason outside of the standards in Divisions 22, 23, 24, that would justify a contested case. She indicated she was struggling why this would suddenly be an issue or is this just a perception that Council is not looking at everything.

Mr. Clark responded that he believed it was perception, that some commenters would like the contested case process to be open to purely procedurally issues so that if an amendment was deemed deficient in some way that it would be available for a contested case. He recently researched some history regarding this rule, and it came out of how the Council was analyzing requests for contested cases back in 2000. Basically, there was a two-part system, Council would look at an issue and determine if it was a significant issue of law or fact. They would then evaluate if there was sufficient evidence provided on the record for Council to make findings on that issue or if further fact findings was needed. The person requesting a contested case would need to demonstrate that the additional fact finding could likely have some impact on the Council's final decision. People can raise procedural issues, but if those procedural issues are not raised in the context of a standard or an applicable law then there is not a clear reason it should be considered.

Vice Chair Grail responded that she thought she understood Mr. Clark, but it's important to her that people don't think the Council is being dismissive and the explanation not only helped her but helps the public as well. We've talked about re-looking at things in 2022, and she believed we are being purposeful and realizing we can't do everything all at one time, but recognizing these concerns exist. She believes that in the 2-year timeframe it will allow people to come back with a different perspective to influence their decision later. Vice Chair Grail acknowledged Mr. Clarks efforts in the amount of research he's done regarding this and thanked him.

Chair Jenkins raised the question of the maximum number of extension requests and stated that this is also something that could be revisited in a couple years if it's not working. However, there may not be a lot of track record by then either.

Mr. Clark responded that hopefully they'd be able to look at the last 5 years data and provide some descriptive statistics about how many extensions had been granted, how many came back for the second time, and how many times certificate holders have exhausted their ability to extend construction deadlines. He felt that data would help with the informed discussion.

C. [11:08 am] Shepherds Flat North Request for Amendment 2 – Council Final⁵ - Continuation of the agenda item after Chase McVeigh-Walker, Senior Siting Analyst, and Maxwell Woods had a chance to review Gilliam County's Article 6 regarding nonconforming uses.

Council Member Winters asked for confirmation that the applicant is not adding more wind turbines, that they were only modifying existing turbines.

Mr. Woods responded that was correct.

⁵ Audio for Agenda Item C = 02:42:02 – December 20, 2019

Council Member Winters asked a question regarding the nonconforming part of the facility set-back, did the department have any sort of assessment about how the modification would adversely impact the "neighborhood."

Mr. Woods responded that surrounding area is all wind facilities and farming activity. So as far as greater adverse impact to the "neighborhood," it was unclear, but the biggest issue at hand would be the proximity to the BPA transmission lines.

Mr. Woods reviewed Article 6, Sections 6.100 & 6.160 of the Gilliam County Zoning Ordinance

Chair Jenkins stated that there is no question the ordinance allows for the continuation of a lawfully established nonconforming use. The question is can you modify a nonconforming use or structure? The ordinance spoke to when it's not necessary, does it speak to it as when it was necessary?

Council Member Winters stated that it said it may be altered, so then you refer to section 6.080 to when and how you can alter or change the use. The proposal is to alter and not change the use. Council Member Winters now feels they must look at general alterations of a nonconforming structure section to ensure they are meeting the criteria. She didn't have an issue with Section 6.080(D), but 6.080(C) is not applicable, and she is not completely sure what 6.080(A) means, but probably just some verification that it's a legal nonconforming use. Leaving 6.080(B) is the question. To the extent of a safety issue in the set-back area regarding the transmission line, are we qualified to figure out if modifying the turbines make it nonconforming. To her it's not more nonconforming because they are modifying height, unless there is a clear safety issue that makes it more nonconforming, which we are reading in to the set-back requirement. Seems there is nothing in the record that shows it being more nonconforming? She felt Council would be speculating on why or why it wouldn't be met due to the modification. Asking if there was anything more for them to rely on, and to help Council decide.

Mr. Woods confirmed there wasn't anything in the record to that matter.

Chair Jenkins, on section 6.080 item D, it is saying will there be a greater adverse impact as a result of the change to the turbine blades. If it's nonconforming now and the turbine blades get longer, it's still nonconforming, but does that mean the adverse impact is greater to the surrounding neighborhood as a result?

Council Member Winters stated that it seemed there is nobody in the area to see it.

Mr. Woods replied that it would be hard to say, that he really didn't know.

Council Member Winters asked if you could tell the difference when driving by?

Mr. Woods explained the difference is around 3 ½ - 4 meters, so it probably wouldn't be noticed when driving by.

Vice Chair Grail stated that clearly throughout the process the BPA has said nothing. When the initial facility was built, she assumed the certificate holder and EFSC went through everything. She is sensitive to potential impacts to the transmission line but is trying to figure out why the set-back changed. Was it due to BPA doing maintenance on the line, or is it blade throw? Without BPA saying we are good, I know we aren't overstepping our boundaries, but she felt like it's still a big obstacle, and she wasn't sure the best way to address it.

Mr. Woods responded the he didn't think BPA had to respond because they have the option to allow a waiver if requested by the site certificate holder if you apply the new code. If you don't apply the new code, the turbines can be repowered without consulting them.

Vice Chair Grail stated that we have attorney's and land use people on our council, so she heavily depended on them since she's coming out of the utility world. She pointed out that it's awesome we have an array of people with different backgrounds.

Council Member Winters pointed out again that BPA was aware of this application.

Mr. Woods replied that BPA is not a reviewing agency, but they do get our notifications. The Department doesn't work closely with BPA on our projects, but the developer would have to because they sell their power through their grid. The Department has not had a specific conversation with BPA regarding the set-back issue. The question at debate here is what applies or doesn't apply, old code or new code? Does the proposed change required an amended CUP? Is this an alteration to a nonconforming structure, and is it allowed? If yes, the result is the BPA set-back is triggered. In his opinion he felt it was an application of the law to what applies, the result would be applying the set-back requirement, or not.

Vice Chair Grail asked if we were doing an amendment process, what would normally happen, would this be applicable in all situations, she was still struggling with how they get to this one issue?

Chair Jenkins asked Vice Chair Grail if she was asking if this were a new application?

Vice Chair Grail replied that if it were a new application then would it be under the new code.

Chair Jenkins confirmed for a new application they would be implementing the current code as it exists for Gilliam County, and BPA would be involved in the process because it would be going through a Type A application review. Because this is an amendment and a repowering, it's going through a more abbreviated process, and no specific notice has been given to BPA.

Vice Chair Grail confirmed she understood that and thanked Mr. Woods for reminding them that BPA is not involved in this decision, and it's just a matter of law.

Council Member Winters stated that the focus she would prefer in deciding whether or not an amended CUP was triggered was to look at whether is this is an alteration to a structure, and if it would be more nonconforming. Typically, staff wouldn't say yes, without talking to BPA and having that on the record. Staff would do the homework, they work with developers and agencies to ensure they have knowledge before allowing an application approval to go forward. She felt we are in an awkward position and it made her uncomfortable not knowing what BPA would say. She understood their focus should be on the code, but usually we would know what the affected parties say.

Chair Jenkins stated we are trying to interpret a local governments code without their interpretation.

Council Member Winters agreed.

Council Member Winters stated that the question was would it be more nonconforming because it is more in the setback due to the modification of the turbine? She didn't know.

Chair Jenkins added the question is does it create a greater adverse impact? Then the issue is why did the county adopt the new code related to federal transmission lines, and is the risk now perceived to be greater from the turbines falling over and impacting those BPA transmission lines.

Secretary Cornett asked Council Member Winters if she is questioning whether the turbines would be more nonconforming if repowered?

Council Member Winters stated no. Would the BPA think they were more nonconforming with the modification. We could request the certificate holder to get a variance from BPA, but that is something of a factual question, and for us to know or not.

Secretary Cornett stated the answer is some are currently nonconforming, and they would become more nonconforming as a result of repowering. There is factual information in the record that some already do not conform to the 150% setback. If they are repowered with taller blades they will become more nonconforming. However, he didn't know if this would create a greater adverse impact to the neighborhood, or whether BPA even cares.

Council Member Winters replied that the set-backs are not a height set-back, so whether they are more nonconforming, maybe?

Secretary Cornett responded that it's 150%, it's a formula. At 150% they already didn't meet the set-back with some of the turbines, so if they get bigger then they will be more than that 150%. It's already a nonconforming structure that would become more nonconforming.

Council Member Truitt stated that there was another keyword, that it wouldn't deviate further, deferring to Mr. Woods for confirmation. He felt it goes in line with what Secretary Cornett was saying about the nonconforming use. The modification in his opinion would increase the deviation of the current nonconforming status.

Chair Jenkins commented that he tends to go to the outcome because the Council is in the risk management business. If the Council believes the modification would increase risk and requires an amendment to the CUP then there could be two outcomes. 1) The applicants can see if they can get a waiver from BPA; or 2) There are 12 turbines that they can't repower. The alternative is that council doesn't require an amendment to the CUP, and we don't apply the new standards to the amendment. The applicant could still have a conversation with BPA, and BPA could still say no. Meaning Council authorizes it, but they don't repower those 12 turbines based on BPA's concerns.

Council Member Winters asked if Council required an amendment to the CUP and the certificate holder didn't get the waiver from BPA then they wouldn't be able to repower the 12 turbines, right?

Chair Jenkins confirmed that is correct.

Council Member Winters asked if we had any knowledge of any history between BPA in regard to waivers?

Secretary Cornett responded that to his knowledge this was the first experience with this provision of a waiver regarding set-backs to transmission lines.

Council Member Howe stated that in reading the code, would the nonconforming use section trump the amendment to the conditional use permit section?

Council Member Winters replied that she didn't think it trumps it, but that is what she was looking for earlier, and how the County defines expansion of a nonconforming structure. She believed that section on defining it meant that every single expansion doesn't need an amendment to a CUP. However, it did define the criteria. If we were going to say they didn't need an amendment to a CUP, we'd have findings in our draft proposed order as to how those criteria was met. That is what she was struggling with, and how it was possible to make findings for those without more in the record. She understood Secretary Cornett's point that just the fact they are doing it, you could argue they are expanding the structure. If they had something from BPA, but they don't, so she struggled with how this isn't an expansion of that structure under the other section.

Vice Chair Grail stated reviewing the timeline for what the Council's options are as to approve the final order or to amend and approve the final order. Then asking is there something we can amend to address our issues and require something else to be done or is that not permissible or are we stuck with having to decide? She wasn't meaning to address it to Chair Jenkins, that it was probably meant more for Mr. Cornett or Mr. Rowe.

Mr. Rowe responded that he didn't have a clear answer, but he explained that if Vice Chair Grail's instinct was that she needed more information then he felt she should ask for more information. However, at that point what is that additional information they should be seeking was unclear. Making another point that whatever the Council's decision was, it's important that Council explains their findings. If they decide due to the provision in Gilliam County's ordinance and that is why they are moving in one direction, then they should cite to that, and clearly explain it.

Chair Jenkins stated he had a thought regarding nonconforming provisions. The nonconforming provisions apply to all uses within the code, zoning ordinance, not just within conditional uses. He wasn't sure if they trump the conditional use section, but they had a broader application than the conditional uses. Chair Jenkins keeps going back to the "greater adverse impact to neighborhood.". It also took him back to their role regarding providing safety. He felt Council could "hang their hat" on the nonconforming use section of the County's code, and implement that, but they wouldn't necessarily need an amendment to the CUP. What was recommended by staff in the condition could be altered to not require an amendment to the CUP, but the problem is you must meet the standards. If they just relied on the nonconforming use provisions, then there would be no options for the wind turbines that are currently nonconforming.

Council Member Winters asked if he really wanted to rely on just the alteration provisions?

Chair Jenkins responded that yes, in order to get the waiver.

Council Member Winters stated that she felt they needed to rely on those provisions to get around having to do anything. However, if they thought they couldn't meet them (subsections B & D) they would need to rely on the alteration provisions.

Vice Chair Grail commented that since they were deliberating, she would like to know what would happen if Council rejected the amendment request. The applicant would have to do what, what would happen then?

Secretary Cornett explained they were only talking about a subset of towers, because the other towers currently meet and would continue to meet the 150% setback standard after repowering. If Council didn't believe the 12 could meet the all applicable standards, then you'd have to split your decision based on the ones that did and the ones that didn't. A condition could be included only allowing the repowering of the 12 if BPA granted a waiver.

Break at 11:42 am back to order at 11:59

Chair Jenkins stated that the discussions have related to the zoning ordinance and whether or not an amended CUP was required and whether if some of the turbines are nonconforming structures can they meet the county's identified criteria. He was not convinced legally that they could determine if these were nonconforming structures or that an amended CUP was required. He stated that because the County has very specific code requirements for determining when an amendment was required, and that the applicant has demonstrated that the amendment does not trigger those criteria, that it would be difficult for them to legally require the conditions the staff has identified in the draft proposed order. He asked for comments from the other Council members.

Council Member Winters stated that after reviewing all the applicable code provisions, she finds that the chapter regarding conditional use permits for the specific facilities is controlling. Regardless whether it's

already nonconforming the specific language on what triggers an amendment to a CUP should be reflected in the draft proposed order. She stated she agreed with Chair Jenkins, and that is how she would be voting.

Vice Chair Grail thanked Max and Chase and agreed with Chair Jenkins and Council Member Winters.

Council Member Howe - I also agree that they wouldn't meet the criteria to require an amendment to the CUP. He also stated that site certificate condition 110 should be dropped from the DPO.

Council Member Truitt stated he agreed.

Chair Jenkins informed Secretary Cornett that he believed they had a consensus.

Secretary Cornett recommended to post-pone Council action until the end of the day to allow staff time to make the amendment to condition 62 as requested by Vice Chair Grail. Also consistent with the consensus, to eliminate condition 110, and either altering or eliminating condition 107 as well. He stated there is value to staff drafting the changes, then bringing them up on the screen for Council to review, and to have a full understanding of what Council was voting on, and what would be in the final order that they issue.

Chair Jenkins agreed, and proposed they circle back to this item at 1:30 pm to allow discussion if need be before the vote, and to allow Council and staff to be on the road by 2 pm.

Mr. Woods sought clarity regarding alerting condition 107, and that staff would be deleting sub A, and sub B says they need to obtain local permits, which is not at discussion here.

Chair Jenkins confirmed that was correct.

E. Public Comment Period⁶ – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that was not otherwise closed for comment. *Note that the public comment timeframe related to the Boardman to Hemingway Transmission Line Draft Proposed Order was closed.*

Irene Gilbert:

1. Please be very careful with site certificates because Dayton Wind (in Washington) has Don Johnson (their hauler) who is dumping old turbine blades on land owned by Sam Hemberts, which is outside of Milton Freewater. There is at least one company that is using a private property owner as a dumping site for these old turbine blades. Anything you can do to assure these blades are being properly disposed of would be useful in the long-term.
2. I'm pretty black and white when it comes to rules. The statute does say that on any amendment you are processing that Council applies the rules to the facility that you would apply to the new application. Council is overriding the statutory approval requirement, and Council should look at an amendment as they would a new application.
3. The type B amendment precludes the public from any opportunity for a contested case and requires them to go directly to the Supreme Court. She questioned the validity of using a process that denies due process in that way.
4. She expressed her concern if the Council deferred evaluating issues raised in public comments on the amendment rulemaking for another 2 years.

Ms. Gilbert concluded, and encouraged Council to consider her comments with any decisions they made.

No phone comments

⁶ Audio for Agenda Item E = 03:22:36 – December 20, 2019

Short break to grab lunches at 12:10 pm

A.2 [12:21 pm] Boardman to Hemingway Transmission Line, Council Review of Draft Proposed Order and Public Comments ⁷ (Action Item) – Kellen Tardaewether, Senior Siting Analyst, Sarah Esterson, Senior Siting Analyst continued this agenda item from Thursday.

Chair Jenkins stated that he thinks having two screens will help with the presentation.

Ms. Tardaewether addressed anyone on the webinar and the teleconference line and explained that they would only be able to see the PowerPoint presentation, and not the additional documents on the second screen in the room.

Council Member Winters expressed that the brief overview that staff provides is most helpful for her when making decisions. That moving from topic to topic for staff to provide a reminder of the issues, that they didn't require a re-citation of all the different topics since they were provided in the staff report. Most helpful for Ms. Winters was the key areas the public has commented a lot on or where they care about, requesting the focus be on those with the applicant and the Department's responses. That will utilize the time most effectively.

Ms. Tardaewether agreed, and that is how they approached and filtered the presentation.

Ms. Tardaewether recited OAR 345-015-0230(1) reminding everyone that the public record was closed.

Structural Standard OAR 345-022-0020

No comments regarding this section of the presentation

Wildfire Risk

Council Member Winters asked how did the information correlate to what Sarah said, and what's coming out of California. She just wanted to understand what they were reviewing when staff said it's mostly the same, but it seemed it was two different things.

Ms. Esterson replied that it is the same except for the modeling in the plans. Her understanding was that Idaho Power would be using the same modeling plan for risk in their wildfire mitigation plan.

Ms. Tardaewether stated that staff is also speculating as they didn't have the information in the record on exactly what is in the modeling.

Council Member Winters noted that the record is a big record to review for the public. Unless they hire their own experts, they wouldn't necessarily have a way to evaluate all of the information. Ms. Winters stated she is not an expert and it is difficult to determine if the plans were good or not. However, there are people that do know how to read the plans. That is the question she had for the record and confidence.

Ms. Esterson - Several Counties expressed concern with impact from the wildfire risk whether it was started by the facility or naturally, and their providers' ability to respond, specifically Baker County. In response to those comments, Idaho Power agreed to provide additional funding and establish relationships with fire districts to support the ability to respond.

Ms. Tardaewether stated that Public Services was going to be discussed at the next meeting in January, and wildfires will come up again.

Ms. Esterson stated for the next Council review they would have all the components pulled into one, providing it to Council in advance.

⁷ Audio for Agenda Item A.2 = 03:27:49 – November 22, 2019

Ms. Esterson also stated they could reach out to the State Fire Marshal's office, as they are one of the reviewing agencies. They could request them to look over some of the components, as well as working with other local fire districts for any additional comments.

Ms. Tardaewether noted that it's not easy getting responses from some of the rural agencies.

Land Use

Council Member Winters asked if the Counties commented and if they met the reasons exception.

Ms. Esterson - In regards to Umatilla and Union Counties, she wasn't sure, but she could investigate the record and get back to Council Member Winters.

Council Member Winters asked Legal Counsel Rowe if he evaluated their reasons for meeting the exceptions. She is recalling the need for the project was not something we are supposed to consider. In her experience the criteria was usually difficult, and if he had investigated this at all.

Mr. Rowe responded that regarding the land use standard, no he had not.

Ms. Esterson asked Secretary Cornett to speak to Council's authority reviewing the need exceptions and how it differs.

Secretary Cornett stated that Council's goal exception review criteria largely follows that of the Land Conservation & Development Commissions but that there is a difference because the Council does not require an alternatives analysis.

Council Member Winters stated she wasn't thinking alternatives, she was mainly concerned about meeting criteria. From what it looked like the County didn't have comments about it. Just wondered if we looked at it legally.

Chair Jenkins asked staff if they recalled whether the counties commented on the reasons presented by the applicant for requesting the goal 4 exception.

Ms. Esterson expressed that Umatilla County Development Code does not have applicable substantive criteria for forest zoned lands and therefore relies on LCDC rules to evaluate conditionally permitted uses in forest zoned lands. Similarly, Union County's code for its timber-grazing zone has applicable substantive criteria for transmission lines, but that differs from LCDC's rules – therefore, LCDC's rules, which establish uses permitted in forested lands as inclusive of transmission lines within a 300-foot right-of-way, are relied upon to establish what impacts/uses would require a goal exception.

Chair Jenkins stated that if the county does not have zoning provisions for forest lands, like Umatilla County, that would explain why comments were not provided on the request for a goal exception.

Ms. Esterson confirmed that for both Counties the department evaluated the goal exception based on uses outside of the conditional permitted use within forested lands (i.e. transmission line within 300 feet of right of way) established in LCDC rules. The Council is not required to follow LCDC's process for evaluating a goal exception, and may evaluate reasons, at liberty, consistent with Council's Land Use standard. Based on the evaluation in the draft proposed order, the Department has not recommended that any reasons presented by the applicant not be considered, such as need for the proposed facility.

Secretary Cornett stated LCDC has statutory provisions that gets into more detail in administrative rules. EFSC's is just a statutory provision which doesn't include the alternatives analysis which gives it a broader interpretation by County, than a County would following LCDC statutes and rules.

Ms. Esterson confirmed that need was not the only reasons relied upon to support the exception request.

Protected Areas

Council Member Winters asked if BLM disagreed with the other agencies that the method employed actually showed the impacts to the National Historic Oregon Trail Interpretive Center(NHOTIC).

Ms. Esterson replied that they didn't specifically say they didn't agree with another agency.

Council Member Winters asked if they have a suggested alternative method?

Ms. Esterson replied she thought they did have recommendations. It was the angle the photo was taken, something along the lines of it was too high, but it was all about the angle.

Ms. Tardaewether added it was from the viewer perception.

Council Member Winters asked what if the visual impact was so significant that it couldn't be mitigated unless the line was underground. Would they deny the application or could they require certain mitigation to ensure the impact wasn't significant, such as undergrounding?

Chair Jenkins responded that he was concerned this was an alternative route if you put it underground. Which has not been presented to them.

Council Member Winters stated that then the option is to deny it. Since undergrounding was not presenting as a route option.

Chair Jenkins commented that they can't evaluate an underground route if it hasn't been presented.

Secretary Cornett responded that proposing a 500kV transmission line would trigger additional evaluations. Putting a 500KV line underground produces enough heat to require a coolant system. The potential impacts, such as coolant containment and leakage, would have to be evaluated under different standards.

Ms. Esterson stated that if as proposed, the Council were to find this particular segment where visibility from NHOTIC occurs is significant and it did not meet a standard, then the next step would be to evaluate mitigation options that could result in it meeting the standards.

Council Member Howe and other staff discussed the photos on the screen (slide 84 of the PowerPoint Presentation or See ASC Exhibit L page 319-320/338 and 321-322/338) including direction, what was existing, and what was proposed and that it is looking North from the NHOTIC panoramic view area.

Secretary Cornett stated he wanted to conclude the evaluation today with the fact that Council will continue to see competing interests including scenic, agricultural and natural resources such as Sage Grouse. Because this is a long, linear facility, the siting of it can be an exercise of balancing the impacts to multiple resources. The Council ultimately needs to come to the conclusion that every segment is consistent with all applicable Council's standards. While the potential impacts to specific resources can be frustrating, keep in mind that Idaho Power has spent a lot of time evaluating these issues and balancing the potential impacts to specific resources in coming up with their proposed location.

C. Shepherds Flat North Request for Amendment 2 – Council Final⁸ 1:43 pm - Continuation of the agenda item after Chase McVeigh-Walker, Senior Siting Analyst, and Maxwell Woods made requested changes to the findings and conditions.

Chair Jenkins stated condition 109 is the public services section as well.

⁸ Audio for Agenda Item C = 04:49:36 – December 20, 2019

Mr. Woods explained that there isn't a weed control standard in public services, so condition 109 is being moved under Council's Fish and Wildlife Habitat's standard.

Chair Jenkins added that the weed control plan spoke to roadways.

Mr. Woods agreed it did, but it's best if it's moved.

Chair Jenkins asked if they'd keep condition 107B.

Mr. Woods replied that he didn't think so, that it was minor anyway. This was more of a reminder type of a condition since they still must get these local access permits regardless.

Chair Jenkins asked if we were going to include any of the discussion regarding the applicant not finding that an amended conditional use permit is necessary.

Mr. Woods confirmed they could document that, and that Council agrees with the certificate holder that an amended CUP is not required.

Council Member Winters also asked to note that Council has reviewed the County code independently as well as reviewed the applicant's argument.

Mr. Woods agreed.

Secretary Cornett stated that he would like Council to come to a final decision today if they were comfortable with providing that direction to staff.

Chair Jenkins stated that he agreed.

Mr. Woods presented the motion language to Council to review, and deliberate.

No discussion or changes were requested.

Council Member Howe motioned to do the following:

- The Council finds that request for amendment 2 does not require an amended conditional use permit from Gilliam County. This decision is based on the provisions of Gilliam County Zoning Ordinance, Article 7, Section 7.020(T)(7)(c)(2), which describe when an amended conditional use permit is required. The Council finds that none of the requirements of Gilliam County Zoning Ordinance, Article 7, Section 7.020(T)(7)(c)(2) are triggered by request for amendment 2. As such, no amended conditional use permit is required.
- The Council confirms that the applicable existing site certificate conditions related to Land Use, including Condition 40 related to setback requirements, continues to apply to the facility, as amended by request for amendment 2.
- The Council finds that new Condition 109, related to a Weed Control Plan, should be imposed under the Council's Fish and Wildlife Habitat standard instead of under the land use standard.
- The Council finds that amended Condition 67, related to Road Use Agreements with Gilliam and Morrow Counties, should be imposed under the Council's Public Services standard instead of under the land use standard.
- The final order shall reflect the discussion and review by Council at the December 20, 2019 meeting.
- Council amends site certificate Condition 62 to require the 6-month inspection report documentation is provided to the Department following the inspection.

Council Member Winters seconded the motion.

During the vote Council Member Grail wanted the record to be clear that she was no expert in land use, and listening to the questions being answered by staff, Council, Legal Counsel that does have expertise in this area allowed them to get to this point. Originally, she did have a very strong opinion, but after hearing everything,

especially from the work by Mr. Woods & Mr. McVeigh-Walker, this led her to agree with conclusions of the Council deliberation and her vote was Yes.

Motion carried unanimously.

Anticipated Future Energy Facility Siting Council Meetings:

- January 23rd-24th, 2020 – Hood River, OR
- March 12th-13th, 2020 – TBD

Meeting Adjourned at 1:57 pm

For more details visit the [Council Meetings website](#)