FINAL REPORT

ENERGY FACILITIES SITING TASK FORCE REPORT ON LAND USE ISSUES

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June 20, 1996

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Addenda to Draft Report:

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I. PURPOSE OF REPORT

The 1995 Oregon Legislature passed Senate Bill 951 that amended a number of sections of ORS Chapter 469 related to energy facility siting. Included in that legislation is the creation of a special task force "to review the public's interest in the siting of energy facilities." Facility siting statutes were originally enacted in 1975 and the legislature found that "significant changes have also occurred in energy industry regulation and energy planning" since 1975. Of particular interest to the legislature is whether there is a public interest in maintaining a "need for facility" standard ("need" standard). The need standard is stipulated by Oregon Administrative Rule (OAR) Division 23 and requires an applicant for an energy facility to demonstrate that the facility is needed consistent with state energy policy. A number of different methods can be used to demonstrate need depending on the type of facility, and there are a number of exemptions from the requirement to demonstrate need.

The current process of siting facilities is overseen by the Oregon Energy Facilities Siting Council (EFSC) which has the responsibility and authority to site most energy facilities as defined in the statutes, including land use authority.

The purpose of this report is to:

a) Provide the Energy Facilities Siting Task Force (EFSTF) with background information concerning current processes and issues in the land use aspects of the siting process;
b) Examine the concept of supersiting and how energy facility siting compares with other supersiting in Oregon; and
c) Identify possible options for land use decisions related to energy facilities

The reader needs to be aware that there are a number of issues other than land use related to siting of energy facilities, and many of these issues are interrelated with land use.

II. OREGON'S LAND USE PLANNING PROGRAM

A. History

Oregon's land use planning program was instituted in 1973 with passage of the Oregon Land Use Act (SB 100). SB 100 clarified the pre-existing legislative mandate of all cities and counties to prepare comprehensive plans and also created a new system of state administrative oversight -- the Land Conservation and Development Commission (LCDC). The LCDC was charged with developing statewide planning goals to guide

the development of local comprehensive plans but was not to have authority to develop state plans or conduct local comprehensive planning. The state agency role was seen as one of coordinating and enhancing local government's role to bring consistency with the goals at the local level as well as with state and federal agencies.[1]

The newly appointed LCDC undertook a one-year process to develop 14 statewide planning goals. This was an extensive process that involved thousands of people in workshops all over the state. During the decade that followed, all of Oregon's cities and counties were required to prepare comprehensive plans consistent with the statewide planning goals. A determination of full compliance with the goals by LCDC is known as "acknowledgment." Because of the general nature of the goals, LCDC has since formulated a number of administrative rules related to interpretation and application of the goals.

When the goals were adopted the state was in an energy crisis and the major northwest utilities were trying to develop new energy facilities, primarily coal-fired and nuclear thermal plants. These facilities were large, costly and had potentially significant environmental consequences associated with them. It was likely that these facilities could not have been sited easily in any Oregon community. The easiest and most expeditious method of siting them was through a state-level siting process, rather than have Goal 13 direct local governments to adopt siting standards as part of the comprehensive planning process.

Energy issues did not command the spotlight during the 1970's and 1980's. The key issues in acknowledgment were protection of natural resources and urbanization. Goal 14, the Urbanization goal, required all cities to adopt urban growth boundaries -- areas that had adequate land for urban development for an approximate twenty-year planning period. The Portland, Salem and Eugene areas were required to develop coordinated urban growth boundaries encompassing all of the cities and urbanized and urbanizing unincorporated lands. All land outside urban growth boundaries was to be maintained as farm or forest land, unless rural land had already been irrevocably committed to non-resource uses. These cases were granted an "exception" to the goal of protecting resource land.

B. Role of LCDC/DLCD

The LCDC and it administrative arm, the Department of Land Conservation and Development (DLCD), has the responsibility to monitor the implementation of the statewide planning goals through local government adoption and amendment of comprehensive plans and land use regulations. All local governments in Oregon have long since passed the acknowledgment phase and have been through at least one

[1] Guide to Local Planning and Development, Bureau of Governmental Research and Service, University of Oregon, October 1984.

"periodic review" to update their plans and regulations to comply with changed circumstances and conditions, such as changes in state law.

ORS 197 provides LCDC with the authority to review and amend the statewide planning goals. Some amendments were made in the early 1980's, and then the Commission was urged to resist this practice while local governments were going through the acknowledgment process. Instead of addressing the goals directly through goal amendments, the Commission has promulgated and amended a number of administrative rules addressing several of the goal areas (e.g. agriculture, housing, natural resources), but not energy.

Throughout the periodic review process, local governments have not been required to address any new mandates for energy planning.

C. Goal 13 Energy Conservation

One of the original 14 statewide planning goals adopted by LCDC was Goal 13 To Conserve Energy. As the title implies, energy conservation, not development of new energy facilities, is the focus of this goal. In fact, the goal is silent on the issue of energy development in general or energy facilities as a land use issue. Indirectly, however, some portions of Goal 13 give direction to these issues and are compatible with EFSC rules. For example, the goal emphasizes the use of renewable energy sources -- water, sunshine, wind, geothermal heat and municipal, forest and farm waste.

The goal's main thrust, however, is toward land use planning practices. The goal says:

"Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

Guidelines under the goal emphasize land use planning practices that have the effect of reducing energy consumption, such as regulating density of uses along high capacity transportation corridors to achieve greater energy efficiency, recycling and reusing vacant land, and the adoption of development standards that have an overall effect of reducing energy consumption.

The emphasis on energy conservation is understandable given the time when the goals were adopted in 1974. This was a time of energy crisis, when petroleum prices were soaring and there were dire predictions about electrical energy supply and demand. The region actually experienced a brownout at the time.

By the time jurisdictions actually prepared and submitted their plans for acknowledgment, the urgency of the energy crisis had dissipated somewhat. Other issues, such as agriculture and forest land protection took the limelight during the acknowledgment process. Nonetheless, jurisdictions established policies related to

energy conservation such as weatherization of buildings and adoption of development standards that would have the effect of an overall reduction in energy use. Some jurisdictions addressed renewable resources, particularly solar access. In fact, during the middle to late 1980's, there was significant activity around the state to adopt solar access ordinances.

Impacts on energy is one of the factors considered in conducting an "ESEE" planning analysis. Under the Goal 5 rule, local jurisdictions identify significant and important natural resources and evaluate the economic, social, environmental and energy (ESEE) consequences of allowing development or conflicting uses on or next to a designated resource site. The ESEE consequences are also evaluated in the amendment of urban growth boundaries, and are one of EFSC's criteria for siting of energy facilities.

D. Public Facilities "Supersiting"

Central to the debate of Oregon's land use planning approach has been the state's interest in land use planning and when that interest should over-ride or supersede that of local government. Senate Bill 100 as introduced included a provision for direct regulation by the state of "areas of critical state concern." These were lands on the seaward side of Highway 101 and wilderness or special recreation areas. However, this provision was dropped in the final bill because counties and other organizations saw this as an unwarranted intrusion into local government affairs.[2] Therefore, Oregon's land use planning program was established without any direct authority of the state to regulate land use -- all land use planning and regulation was to come indirectly through local government compliance with the goals. The goals were developed to take into account the areas that were considered of statewide concern. This is especially true of goals 15 through 19 that were adopted after the original 14 goals. These goals deal with the Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

Since the goals were adopted, the legislature has amended the land use laws several times to provide a more direct role for the state in planning and land use regulation -- often termed "supersiting" -- not to address areas of special concern, but rather, to address particular problem land uses. There are actually two types of supersiting legislation constituting over-rides of local land use regulations. One type, which includes facilities like child care centers and adult foster care homes, required local zoning ordinances to be revised to allow these uses under circumstances outlined in the legislation, but the local government retains the actual authority and responsibility to site them. For distinction, we will refer to this approach as "superzoning". In the other type, which will be discussed in this paper, the legislature has created unique processes to site facilities by an entity other than the local government -- true supersiting. Only three types of facilities are currently subject to true supersiting in the land use planning

[2] Ibid.

process -- energy facilities, prisons and light rail transit[3]. In all three situations, the authority and responsibility for approval of these facilities is taken out of the hands of local government and given to another authority.

III. CURRENT PROCESS FOR ENERGY FACILITY SITING

A. General Process

The issues and standards under which energy facilities are sited fall within the following broad categories -- financial and managerial, need for facility, environmental, public safety and health, and land use.

When a Notice of Intent (NOI) to develop an energy facility is received by ODOE, it and the application are sent to a number of state commissions and agencies with a possible interest in the facility, as follows:

a) Department of Environmental Quality (DEQ)
b) Water Resources Commission
c) State Fish and Wildlife Commission
d) Water Resources Director
e) State Geologist
f) State Forestry Department
g) Public Utility Commission
h) State Department of Agriculture
i) Department of Land Conservation and Development (DLCD)
j) Any other state agency that has regulatory or advisory responsibility with respect to the facility

These agencies may comment and make recommendations regarding additional technical studies and conditions of approval.

DLCD is one of the state agencies that receives a copy of the NOI and application of a proposed facility. The agency, however, does not have direct authority to make recommendations concerning a proposed facility. It can and sometimes does comment on the applicable substantive criteria that has been submitted by the applicant, and/or assists local governments in identifying those criteria.

B. Land Use Approval Process

Since 1975 when the EFSC was established, there have been some changes to the land use siting rules, most recently in 1993. Below we discuss the current process as revised by the 1993 Legislature.

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[3] In the case of light rail transit, the Legislature has granted supersiting authority with particular projects and not given the authority *carte blanche*.

Land use issues are addressed at the same time as need and environmental issues associated with a proposed new energy facility. When an applicant files a NOI or an application for a facility, he/she must also declare which "path" is chosen for obtaining land use approval. Applicants have two paths to choose from -- A or B. Path A provides for local land use approval under the local government's acknowledged comprehensive plan and land use regulations. Path B provides for the land use decision to be made by EFSC under state law and its rules. Whichever path is chosen, the applicant must stay with that path once declaring it.

1. Path A Approval

Path A provides for the local government to make the land use decision consistent with its acknowledged comprehensive plan and land use regulations just as it would any proposed land use. An acknowledged comprehensive plan is one that has been found to comply with the state land use planning goals; thus a separate finding of compliance with the goals is not required. Appeal of the local government's decision to approve or disapprove an energy facility by any party to the proceeding does not go to the Land Use Board of Appeals (LUBA), and then to the Oregon Court of Appeals and Supreme Court, as do other local government land use decisions in Oregon. Any party to the proceeding who wishes to appeal the local land use decision must participate in the EFSC process to have the appeal considered. Appeals of EFSC's decision then go directly to the Oregon Supreme Court.

If the applicant chooses Path A, the local land use decision must have been made and be included in the proposed (draft) order of the Oregon Department of Energy (ODOE) before going to a public hearing.

In recent years, only one applicant with a site certificate (approval by EFSC) has chosen Path A for land use approval. However, this involved a power plant (Coyote Springs in Boardman) that was permitted outright in the jurisdiction's comprehensive plan and land use regulations, an unusual situation. All other approved applicants to date have chosen Path B[4].

2. Path B Approval

Path B provides for the EFSC to make the land use decision as part of its siting process. This is a more complicated process than Path A.

Under Path B the EFSC must make a finding of compliance with the statewide planning goals. A proposed facility will be found to be in compliance if it:

[4] One other applicant has filed an NOI and has selected Path A, but this facility has not yet received site certificate approval.

a) Complies with "applicable substantive criteria" from the local government's comprehensive plan and land use regulations and applicable LCDC administrative rules; or
b) Complies with the statewide planning goals, or an exception to any of the applicable goals must be justified under the EFSC's rules.

The normal process for addressing Path B is for ODOE to request the local government to develop the "applicable substantive criteria" from its acknowledged comprehensive plan and land use regulations.[5] Applicable substantive criteria are the goals and policies of the comprehensive plan and implementing regulations and standards, all of which have been found by LCDC to be in compliance with the statewide planning goals. The process for local government to develop these criteria can be a significant undertaking, especially if its plan and ordinances do not specifically address energy facilities, or, as in the case of a transmission line, the facility is in more than one zoning district or jurisdiction.

Where the facility passes through more than one local government jurisdiction, or more than three zones of the jurisdiction, the EFSC has the choice of whether to apply the local government's applicable substantive criteria, or whether to apply the goals.

If, after the local government has developed the criteria, the EFSC finds the criteria cannot be met by the facility, it can address the statewide planning goals directly and even grant an exception to the goals. The standards for an exception are those provided for in statewide planning Goal 2, Land Use Planning, for any land use exception to the goals.

An appeal of EFSC's decision under either Path A or B is directly to the Oregon Supreme Court.

Even though Path B is more complicated than Path A, the general opinion of most of those who have been involved with the siting process is that Path B is preferable to A for several reasons. First, with a Path A route, there is a lack of certainty as to how local governments will respond to energy facilities in the permitting process, due either to a lack of knowledge and understanding of energy issues and energy facilities or due to potential local opposition. Second, many local comprehensive plans do not have provision for energy facilities as outright permitted or conditional uses; in a circumstance such as this, a likely response might be that an application could not even be accepted for processing. Finally, there is concern that many local government staff do not have the specialized expertise needed to review a proposal. Whether these concerns are valid will be discussed later under Part IV Analysis of Land Use Issues in Facility Siting.

[5] The rules provide that a special advisory group composed of the local elected officials develop the criteria. Normally, local government staff develop the criteria, or the applicant develops it for review and comment by the local staff and then approval by the special advisory group.

IV. ANALYSIS OF LAND USE ISSUES IN FACILITY SITING

Unlike the 1970's when the EFSC was established and nuclear, hydropower and coal-fired power plants were the norm, most power generating facilities today are of a smaller scale and are gas-fired, geothermal, wind, or other renewable resource. Transmission lines or pipelines (linear facilities), or both, are associated with power generating facilities today as they were then.

A. Types of Energy Facilities and Land Use Issues

Prior to 1993, the siting statutes had separate siting standards for each type of generating and linear facility. The 1993 Legislature (SB 1016) consolidated and simplified the statutes, and EFSC followed with simplification of the administrative rules, to nearly a single set of siting standards and procedures for all energy facilities.[6] According to ODOE staff, each facility is unique and, therefore, it is difficult to generalize about the impacts of any type of facility. Furthermore, there have been so few sited in the past twenty years that it is too soon to speculate about any patterns related to types of facilities, with a few exceptions. For example, gas-fired thermal plants are believed to affect the earth's ozone layer through emission of carbon dioxide (global warming). Wind generators have been found to be a danger to birds and take considerable land area.

It is also difficult to generalize about land use issues in the siting process for the same reason -- there have been too few in recent years. Many procedural problems with the siting statutes were rectified in the 1993 Legislative session. Prior to that time, the statutes were unclear about the role of local government in the application review and findings process.

The case file of Hermiston Power Partners (HPP) was reviewed to ascertain land use issues -- this was the only case that several people who have been involved with siting believed had any land use issues of interest. Below, each issue we found is identified and discussed.

- Interpretation issue, City of Stanfield. The City of Stanfield City Council was required to make an interpretation of its zoning ordinance to determine whether transmission lines were a permitted use. The ordinance listed "utility distribution lines", but not transmission lines. Furthermore, the ordinance prohibited a "commercial facility" in some zones. The Council made a finding that transmission lines were utility distribution lines and that they were not a commercial facility. The interpretation was not appealed.
- Problem identifying criteria, City of Umatilla. The City of Umatilla had difficulty determining whether the applicant had identified correctly the applicable

[6] Some different procedures still exist for high voltage transmission lines (in excess of 230,000 volts).

substantive criteria or whether the facility complied with the criteria. This caused some delay in the process.

- Transmission line impact, City of Umatilla. The Umatilla Planning Commission found that the transmission lines traversing the City would have a negative impact on developable residential and commercial land. It recommended a condition that the visual impact be mitigated by use of specific materials and paint colors.
- Transmission line moratorium, City of Umatilla. The City Council declared a 90 day moratorium on constructing, installing or erecting high voltage electric transmission lines carrying 69 KV or more and requested the power companies to assist them in developing regulations to minimize the potential adverse impact. HPP developed a data base of all transmission lines so they could better manage transmission line issues in the future and paid a $10,000 mitigation fee to the City.
- Property owner notification during public hearings. Complaints were made by property owners that they did not receive timely notice of plans to construct the power plant and transmission lines. This occurred because the applicant is required to submit the names of property owners within the impact area at the time the NOI is filed, which can be months in advance of public hearings. During this interim, property owners can change and new owners may not receive notice.

Transmission lines pose a particular problem for the City of Umatilla, which is cross-crossed with lines and will likely have even more lines as more power facilities are constructed in Umatilla County. According to city officials, the actual location and use of transmission lines can differ from what energy developers first propose as part of the site certificate process, and the total impact of transmission cannot be easily evaluated by their community. For example, the Hermiston Generating Project, now under construction in Hermiston, identified an existing corridor for transmission through the City of Umatilla, and this seemed acceptable to them. However, they did not know that it meant replacing existing poles with much larger, more unsightly towers. Furthermore, Hermiston Generating may displace the existing Umatilla Electric Co-op (UEC) 115 KV line on these towers, thereby forcing the UEC to use its condemnation powers to build a new transmission line. Transmission lines under 230,000 volts, and less than 10 miles in length, within only one city or county, are not subject to state energy facility siting rules. This circumstance has Umatilla city officials concerned.

B. The State's Land Use Interest in Energy and Facility Siting

A paramount question in examining the energy facility siting process is: what is the state's or public's interest in facility siting and land use?. We examined three sources that provide a few clues to this question. These sources were ORS Chapter 469, the Oregon Benchmarks and Goal 13.

1. ORS Chapter 469

The current statutes in ORS Chapter 469, related to Energy conservation, Public Health and Safety, were enacted in 1975, and they have been amended several times since. The chapter begins with section 469.010, Legislative Findings, the policy basis for the state's energy regulations. This particular section was last amended in 1979. There are two major findings followed by seven policy statements. These two findings are:

"(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.
(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is therefore, the policy of Oregon: ....."

The policies support (paraphrased):

a) Development and use of "permanently sustainable energy resources"
b) State government acting as an example of energy conservation.
c) Fulfillment of basic human needs, a free and productive economy and preservation and enhancement of environmental quality.
d) State government assistance to citizens and industry in adjusting to a diminished availability of energy.
e) Energy efficient transportation
f) Cost-effectiveness in state agency decision-making regarding energy facilities.
g) State government as a source of impartial and objective information to enhance energy policy.

This policy reflects the pessimistic outlook for nonrenewable energy sources that existed in the mid-1970's, based upon the expensive and resource-consumptive thermal plants that were typical of that period. The thrust of these policies is conservation and the development of renewable energy resources such as solar, wind, biomass, and geothermal. There have been significant advances in energy conservation and in energy generation technology. While there have been some advances in the development of renewable resources, these have not been to the extent envisioned in the policy because the cost and reliability of these resources are less than traditional fuel sources. Finally, no one in the 1970's envisioned we would have an energy surplus by the late 1990's.

There are two additional statements of policy in other areas of Chapter 469. Section 469.190 sets forth the states' policy on providing tax relief for Oregon facilities that conserve energy resources or use renewables.

Section 469.310 is a significant comprehensive policy statement guiding the siting, monitoring and regulation of all energy facilities consistent with state policy, protection of the public health and safety, and air, water, solid waste, land use and environmental protection policies.

A key policy question that is not answered in any of these sources is what role is Oregon intended to play today in the development and distribution of energy -- in the Pacific Northwest, western United States, and perhaps nationally -- in light of current energy forecasts and needs, deregulation, the nature of energy facilities being built today and other factors. For example, should Oregon be primarily an importer of energy from elsewhere, a developer and exporter of energy, or should it be self-sufficient? If we had a policy on this question it would help answer both the question of propriety for a need standard as well as help provide direction on land use.

If the state should be primarily an importer, energy facility siting, including land use, would be a minor activity. Regulations and policies would likely be geared to discouraging energy development in the state. If Oregon should be an exporter of energy, however, facility siting would likely be a significant activity, especially in areas of Oregon where the potential exists for major energy development such as is already occurring in Umatilla and Morrow counties. In this case, the need standard would be required to address more than just Oregon, and could become substantially more complicated than it is today. More controls on land use may be required, in this case, to prevent too many facilities from being built in certain locales or to prevent cumulative environmental impacts.

Energy self-sufficiency would require more focus on the delicate balance between supply and demand -- the "need for facility" standard -- as the basis for siting. This approach would also likely foster more state policy emphasis directed to renewable resources. From a land use standpoint, a concern for the "best site" might be more important under this policy approach than the others.

2. Goal 13

As was discussed in Section II, Goal 13, written about the same time as Chapter 469, also stresses energy conservation and the development of renewable resources. It does not address the siting of energy facilities. The goal should probably be reviewed and updated by LCDC to reflect the full range of today's energy issues to assist the siting process.

3. Oregon Benchmarks

The Oregon Benchmarks provide quantitative goals for carbon dioxide emissions and energy rates and services. These benchmarks are provided in Appendix A.

The benchmarks are only statistical goals -- the document does not explain how the goals are to be achieved. In talking to Department of Energy staff, the benchmarks are considered in the siting process, at least indirectly. However, it is not clear to us the exact relationship between the benchmarks and siting decisions, if there is any.

4. Conclusions Regarding State's Interest

The state's policies as expressed in Chapter 469 and Goal 13 are now over 20 years old. It is unclear how accurately they would reflect state policy today if they were subjected to a detailed examination. At the time they were written, the emphasis was on objectives of conservation, environmental protection, development of renewable energy resources and the concern for cost to the ratepayers of new facilities. The environment in which they were written included severe predictions of energy shortages and costly and potentially environmentally damaging energy development alternatives. The siting process was established to address these objectives and provide safeguards to protect the public interest.

The energy outlook today may not be as bleak, and energy prices reflect that. Significant strides have been made in conservation. Most people say that environmental issues are no less of concern than they were twenty years ago, even though the specific issues may have changed. Many also believe that renewable energy resources should be given even more emphasis; at the same time, renewables are costly to develop, may be less reliable and have their own environmental impacts. Thus, these policies probably do not reflect today's thinking on these issues and could benefit from thorough review and revision.

V. ISSUES OF LAND USE SUPERSITING

For the past twenty years, local governments have been relieved from siting energy facilities. Although local governments have been involved in the siting process, all final decision-making about energy facility siting rests with the EFSC. In addition, developers of energy facilities are uniquely exempted from local land use processes. A number of questions are raised: Does this arrangement serve the public interest? Is it necessary to have a state authority make all land use decisions for energy facilities? Does the exemption have the effect of making development of energy facilities easier or more difficult than other land uses? How does supersiting of energy facilities compare with supersiting of state corrections facilities and light rail transit facilities? How do land use issues of energy facilities compare with other major land uses that are not subject to supersiting?

A. Opinions Concerning the Importance of Supersiting

We interviewed a number of people with experience in the siting process to determine what the issues are, why the supersiting process is important and to help obtain

answers to these questions. Below we list the reasons cited in favor of supersiting and evaluate them.

1. *Linear facilities such as high voltage transmission lines would be very difficult to site locally because they usually traverse several jurisdictions. Rejection by just one jurisdiction could prevent any transmission line from being constructed.*

As was discussed previously, it is not clear whether transmission lines were permitted within the City of Stanfield's zoning ordinance, and the City Council had to make an interpretation. The interpretation was not appealed but could have been, or to start with the Council could have made a negative finding. We also found that transmission lines pose a particular problem in the City of Umatilla because of the large number of them and because of the uncertainty about how power plants proposed elsewhere will impact transmission lines in their city.

Linear facilities, which also include pipelines, will be difficult to site where more than one jurisdiction is involved because of differing regulations or local land use decisions regarding their siting.

2. *Local governments do not have the capacity and technical expertise to address energy facilities, especially such technical aspects as low level radioactivity, electro-magnetic fields and global warming.*

It is likely true that local governments do not have the type of expertise needed to address these unique technical areas. However, typically, local governments do not have in-house expertise in many technical areas and have to rely on the applicant's consultants and state agency expertise, or at times, they have to retain their own consultants to evaluate issues on the community's behalf.

There are many types of land uses with potential significant impacts that are not subject to supersiting -- for example, landfills, airports, and industrial uses of all types. Airports, landfills and many industrial uses have a similar list of potential environmental and land use impacts that power plants have -- noise, air quality, water quality, odors, safety -- to name a few. Depending on location, these facilities can also have fish and wildlife impacts and concerns for adequate public services for the proposed uses. Local governments draw on a range of expertise to assess impacts and make land use decisions.

We reviewed three jurisdictions to compare how these major land uses are managed in the land use approval process, shown in Appendix B. As can be seen from the table, it is very common for local governments to defer to state and federal agencies with the regulatory authority or expertise in particular technical areas.

If land use approval is reinstated to local governments, it is possible for ODOE to retain technical expertise to assist them. There could also be an ODOE licensing role very similar to DEQ licensing of landfills and Federal Aviation Administration licensing of airports. The authority could include addressing statewide issues such as global warming. Another alternative is to empower other state agencies, such as DEQ, with authority to regulate these aspects of siting.

The local capacity to simply manage the land use approval process is another matter. Some smaller jurisdictions would probably find it difficult, even if their fees could cover the cost of technical experts needed to evaluate the process. There may be some creative ways of handling this issue, however. For example, ODOE could maintain a list of qualified experts local governments could use. Or perhaps ODOE could hire a planner who could be contracted out to local governments to help them manage the land use process.

A large number of local governments probably do have the capacity to manage the land use process, and may be perfectly willing to do so.

3. *Some state agencies, like Fish and Wildlife, can have more impact through the state siting process than they could through a local government process.*

This is a concern because Fish and Wildlife does not have land use regulatory authority. It is believed that their input would be given less weight in a local land use proceeding than it has in the EFSC process. This is difficult to judge, but as with other environmental technical areas, many local governments rely heavily on Fish and Wildlife to review land use proposals and provide comments and recommended conditions of approval. Local ordinances can be strengthened in this area if needed to ensure that fish and wildlife issues are addressed adequately and conditions of approval have "teeth" in them.

4. *Local approval would be more political -- energy siting needs to be made outside of a political arena.*

The HPP example and the events in the City of Umatilla demonstrate this concern. However, the state's land use planning program was intended to be a process of implementation of state goals at the local government level, with oversight by the state government. The land use planning and regulatory process is political, and many would state that this is how it should be -- otherwise, we might as well have the state do all land use planning and regulation. What is unique about energy facilities that they should be exempt from local politics? The HPP example indicates that it really is not exempt anyway. The claim is that EFSC, as a state-level appointed board, is "more removed" from local politics and can objectively address the siting standards.

This is an example where a determination of the need for facility may be critical to effectively evaluate this concern. If need is critical and urgent, and local approval could interfere with expeditiously approving power generating facilities, then this concern may be valid. If the need for facility is not critical or urgent, then exempting a particular use from the local land use process may not be any more warranted than exempting other industrial uses.

5. Supersiting provides a "one-stop" shop for facility siting, which helps coordinate and expedite all the reviews.

A one-stop shop is usually preferred by applicants, no matter what type of land use is under consideration, so the supersiting process is theoretically a service to developers. The coordination that occurs by ODOE, however, is not much different from what occurs at the local level with a major facility involving many areas of technical expertise and issues. Whether the EFSC process expedites land use approval is debatable. Local governments are required to process and make land use decisions within 120 days after an application is found complete. The EFSC process typically takes much longer, partly because of the time it takes to develop the substantive local criteria under Path B for EFSC land use approval.

The part of the process that may be expedited is the appeals process. A local land use approval would typically go through two stages at the local level, and perhaps more – planning commission first, then governing body. Appeals of the local decision are to LUBA, then the Court of Appeals, and then the Supreme Court. A local land use decision on an energy facility could take at least two years to go through the entire appeals process. The time might be somewhat shorter in the EFSC process, with appeals directly to the Supreme Court.

6. Local governments do not provide for energy facilities in their ordinances, and therefore, they could not be sited without significant work to adopt new ordinances.

We sampled three jurisdiction's development regulations to determine whether energy facilities could reasonably be sited today in Oregon. The three jurisdictions we looked at are Umatilla County, Washington County and Deschutes County within the Bend urban growth boundary. Umatilla County has experienced more recent activity in energy facility siting than any other county in recent years. Washington County has not experienced any facility siting – we chose it to represent a contrast with Umatilla and because it is largely urban with significant exclusive farm use zoning. We chose Deschutes County within the Bend urban area to get an idea of another location in Oregon that would have a mix of urban and rural character. This comparison is shown in Appendix C.

We found that all three jurisdictions have provisions for siting energy facilities. Both Umatilla County and Washington County permit energy facilities (power generating

and transmission lines) in one or more industrial zones -- the ordinances do not limit the type of facilities, or whether they are public utilities or private companies. Both also permit them in exclusive farm use zones under conditional use permits, subject to criteria under state law for exclusive farm use zones.

Deschutes County permits hydroelectric facilities in any zone along the Deschutes River under a conditional use permit. A chapter in the ordinance is devoted to standards for approval. It appears that other types of power plants and facilities may be permitted in other zones.[7]

Even though these jurisdictions do have provisions for energy facilities in their ordinances, one local planner we talked to admitted that they may not be exactly what is needed today, if his jurisdiction actually had the authority to site facilities. It is likely that local ordinances would need to be beefed up to address more current issues, and particularly to provide the coordination with federal and state agencies that would be needed.

B. Overlap of Land Use and Environmental Issues in the Siting Process

In talking with people about the land use process, we find that there is a great deal of overlap between land use and environmental issues, and to a lesser degree, need and land use. It is difficult to unlink the connections between these issues when discussing just the land use aspects of siting.

When we examine local government's ability to manage the land use process, it necessarily includes, to some degree, managing environmental issues for two reasons. First, local comprehensive plans and land use regulations are required to comply with the statewide planning goals. Second, the implementation of the plan and land use regulations through decision-making on development applications must comply with local plans and regulations. The statewide planning goals, collectively as well as individually, have environmental protection as a primary focus. Those that are primarily related to environmental protection are:

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources
Goal 6: Air, Water and Land Resources Quality
Goal 7: Areas Subject to Natural Disasters and Hazards
Goal 8: Recreational Needs
Goal 13: Energy Conservation
Goal 15: Willamette River Greenway
Goal 16: Estuarine Resources
Goal 17: Coastal Shorelands
Goal 18: Beaches and Dunes

[7] We are also aware that Deschutes County (rural area), Klamath County and Klamath Falls have adopted geothermal regulations.

This means that local comprehensive plans must contain policies and standards that protect these environmental resources to the extent they are present in the local jurisdiction. Furthermore, plans and land use regulations must be updated to address changes in state law, LCDC goals, administrative rules, and federal laws.

The strength of local plans and land use regulations to address specific environmental issues related to siting is difficult to generalize about because each plan is different and reflects the level of understanding of these issues at the time the plans and regulations were adopted. It is probably fair to say, since local governments have not had the authority to site energy facilities since the goals were adopted, that most plans and regulations do not provide all the standards needed to address the range of issues and impacts that are present with energy facilities.

C. History of Supersiting in Oregon

In almost every legislative session since SB 100 was passed, some kind of supersiting or superzoning bill has been introduced. By the mid 1980's the state Legislature had seen a rash of supersiting bills introduced, and local government had been fairly effective in having these bills defeated. However, in 1987, supersiting bills passed for prisons, day care centers, residential care facilities and a proposed superconducting super collider. The Governor's Office was concerned that more bills would be introduced in the next session before examining the question of necessity. The Department of Land Conservation and Development (DLCD), staff to LCDC, was asked to convene a special task force to investigate the issue of supersiting. The major question was whether the statewide planning program aided or impeded siting of needed public facilities.

After studying the issue, the task force on supersiting concluded that Oregon's record was very good compared to other states. There were remarkably few facilities that had been denied and the amount of litigation involving siting was small. In a number of instances, local planning was found to enhance the siting process.[8] Energy facilities were not examined by the task force because local government did not have the authority to site them.

In 1991 another task force, the Facilities Siting Study Advisory Group, was convened by LCDC to develop a process for siting facilities of regional or statewide significance. The Group recommended a concept for siting facilities of regional/statewide significance, which included a role for LCDC in reviewing and certifying whether there

[8] Facility Siting in Oregon: Findings and Recommendations of the Siting Advisory Committee. Adopted by the Land Conservation and Development Commission, February 22, 1989

is a statewide or regional need for a facility. The process for making a decision would be developed at the local level. The recommendations were not implemented.[9]

Since the 1989 task force report, only two supersiting bills have passed the legislature, both for light rail transit in the Portland Metro area. The first bill allowed supersiting of the Westside Light Rail Transit facility and the second, passed by the 1995 legislature, allows the same process for the South/North Light Rail Transit facility.

D. State Corrections Facilities Supersiting

In 1987 the Oregon Legislature enacted HB 3092, the Corrections Facility Siting law, to address severe overcrowding in the state's prison system and the need to expedite land use processes to build new facilities. Corrections facilities are perceived to be a "locally unwanted land use" (LULU). After the session, the Governor convened a Task Force on Corrections Planning to address the long term issue of siting because this legislation was due to sunset in 1990. Research was conducted by the Bureau of Governmental Research and Service at the University of Oregon on alternative approaches to siting. The recommendation of the study was to build on the state's existing land use planning program and not establish a separate siting authority.

However, this recommendation was rejected in favor of retaining a supersiting authority. The current law provides for a five-member Corrections Facilities Siting Authority appointed by the Governor. Unlike energy facility siting procedures, there are no requirements in the statute to address land use laws in siting correctional facilities. The primary criteria relate to the interest of the local jurisdictions in having a correctional facility and their ability to provide adequate infrastructure to serve it. Other criteria relate to costs of land, operations, and the location and dispersal of social service residential facilities and other correction facilities.

Final authority to approve sites for corrections facilities lies with the Governor. Appeals are directly to the Oregon Supreme Court.

After the corrections supersiting law passed, the process of site selection for corrections facilities became a bidding process, with local governments vying for the jobs and other economic benefits that would accrue to the local community.

E. Light Rail Transit Supersiting

The process to supersite light rail transit is substantially different from both energy facility siting and corrections facility siting.

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[9] Siting Process for Facilities and Projects of Regional or Statewide Significance. Prepared for the Oregon Department of Land Conservation and Development by Dorman, White & Company; Black Helterline; and Faulkner/Conrad Group, July, 1991.

Supersiting for the Westside Light Rail Line (Portland, Beaverton, Multnomah and Washington Counties) was approved by the 1989 Legislature and in 1995, the Legislature approved the same process for the South/North Light Rail Line (Milwaukie, Portland, Vancouver and Clackamas County). Even though the Westside Light Rail jurisdictions through which the facility passes all wanted light rail, and approved the alignment, supersiting was justified on the basis that it is a linear facility passing through several jurisdictions with differing comprehensive plans and land use regulations. To require Tri-Met, the regional transit agency, to process applications with each local government, could jeopardize receiving federal funds and constructing the project within the approved budget. The local governments did not object to supersiting.

With light rail transit, LCDC develops criteria for approval, and the law sets out a fairly complex set of steps for developing the criteria, providing notice of those criteria to the public, holding hearings, approving the criteria and providing an appeals process. Once the criteria are approved, and after a series of decision-making steps involving the affected local governments, the Metro Council, the regional governing body in the Portland metropolitan area, makes findings in compliance with the criteria and approves or denies the project. Appeals of the Council's decision are to the Land Use Board of Appeals (LUBA).

F. Do We Need Supersiting for Energy Facilities?

ORS Chapter 469.501 and Oregon Administrative Rules Division 22 set forth standards for approval for siting non-nuclear energy facilities. We discuss each of the land use and environmental criteria and indicate local governments' ability generally to address each of these criteria. As was discussed previously, local governments have not had the authority and responsibility to site energy facilities since the goals were adopted. This discussion does not address the need standard or associated issues of organizational, managerial, and technical expertise, which are also included in the standards for approval. The criteria are paraphrased from OAR Division 22.

- Protection from all reasonably probable seismic events.

The Oregon Department of Geology and Mineral Resources develops and maintains seismic information to indicate those areas in Oregon that are subject to seismic hazard. Local governments are required to comply with Goal 7, Areas Subject to Natural Disasters and Hazards. The Uniform Building Code requires all structures in Oregon to be constructed to standards reflecting the most current seismic zones. Energy facilities are defined in the code as "essential" and must be constructed to a higher standard than ordinary structures like office buildings (the "importance" factor). Local governments, as well as the State, have the authority to require developers to conduct special building engineering studies to address seismic hazards. Thus, local governments are able to adequately address this criterion.

- No significant adverse impact to soils.

the U.S. Department of Agriculture Soil Conservation Service (SCS) provides soils information to most local governments and they can also call on the SCS to provide assistance in interpretation of soils information, including any needs to require special studies addressing impacts to soil erosion, landslides, etc. Local government can adequately address this criterion.

- Compliance with local land use criteria or with the Statewide Planning Goals.

The siting process requires local governments (special advisory group) to develop the applicable substantive criteria for EFSC, or at the least, to review and agree with the criteria that is developed by an applicant applying for a site certificate. This criteria would be the same criteria used in a local siting process. It is normal practice in the local land use application process to require an applicant to address all relevant criteria and standards in a land use application in the form of findings. Local staff, planning commissions or governing bodies review and approve, reject or modify these findings, and/or develop conditions of approval that address these criteria and standards.

- An energy facility must not be located, nor have a significant adverse impact on: national parks; national monuments; wilderness areas established under The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness pursuant to 43 U.S.C. 1782; national and state wildlife refuges; national coordination areas; national and state fish hatcheries; national recreation and scenic areas; state parks and waysides; state natural heritage areas; state estuarine sanctuaries; scenic waterways, existing and potential; experimental areas; agricultural experiment stations; research forests; BLM areas of critical environmental concern, outstanding natural areas and research natural areas; state wildlife areas and management areas. Specific locations are identified in the OAR and exemptions are granted for transmission lines and natural gas pipelines under certain conditions.

Local governments already address many, if not all, of these resource areas in the their comprehensive plans in compliance with statewide planning goals such as Goal 5 and have regulations protecting them from inappropriate land uses and other impacts. If local plans and regulations are not adequate to address impacts from energy resources, they could be amended to do so.

- Consistency with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-030.

It is likely that most local governments do not have a standard that requires this mitigation standard, and most governments probably have general standards,

particularly in association with any fish and wildlife areas that have been designated in the comprehensive plan. The Oregon Department of Fish and Wildlife is frequently consulted by local governments where known resources are present. If a particular type or level of mitigation is desirable, local comprehensive plans and land use regulations may have to be amended to give them the authority to require these.

- The facility design, construction, operation and retirement must take into account conservation programs for threatened and endangered species, or otherwise not have a significant impact on survival or recovery of such species.

The same comments apply to this standard as the previous one.

- The facility construction, operation and retirement must not have significant adverse impacts to existing or potential National Register historic, cultural or archaeological resources.

Local governments are required to protect these resources under Goal 5.

- The facility design, construction and operation is not likely to have significant adverse impacts to recreational opportunities in the impact area.

Local comprehensive plans and land use regulations may not provide the degree of protection for recreational opportunities that the EFSC standards do, except in the special areas listed above (national parks, wilderness areas, etc.).

- The facility construction and operation is not likely to have a significant adverse impact on the ability of communities to provide governmental services and other needs such as housing and health care.

Most local governments routinely address impacts to community facilities and services as part of land use decisions.

- The applicant shall minimize solid waste and wastewater and recycle and reuse wastes; accumulation, storage, disposal and transportation of wastes must have minimal adverse impacts on surrounding and adjacent areas.

While local ordinances routinely address waste management, this particular standard requiring recycling and reuse may or may not be included in local ordinances.

The degree to which energy facilities would be subject to local scrutiny for impacts depends on whether they are permitted outright (nondiscretionary) or whether they are permitted with a conditional use permit (discretionary, but under clear and objective standards). Where they are permitted outright, the city or county may only have a requirement for site plan approval, subject to compliance with specific state laws and

other local ordinances and standards. Specific issues with energy facility siting might not be addressed under these circumstances. Under a conditional use process, the city or county has more authority, depending on its ordinance language, to require impact studies and has more latitude to establish conditions of approval.

In conclusion, many of the EFSC standards of approval are addressed in local comprehensive plans and land use regulations by virtue of their compliance with statewide planning goals. There may be some deficiencies as noted in the discussion. These could be rectified through legislative or LCDC directive, if necessary.

VII. POSSIBLE OPTIONS

As many would say "If it isn't broken, don't fix it." Is the current land use process of siting energy facilities broken?

It depends on how one defines "broken." If it is guided by what applicants, the ODOE and some local governments believe, the state land use process of supersiting works well and is not broken. Applicants appear to prefer it over dealing directly with local government, and some local governments may be just as satisfied that energy facility siting is an issue that they do not have to deal with directly. Most local governments that have been involved with the process appear to be satisfied that their local concerns are adequately addressed by EFSC. However, in the opinion of one local government, the system does not work well in that it allows powerful interests to override local concerns.

Another measure of whether the system is broken is to examine the reasons for supersiting and determine whether they are valid. These reasons were discussed in the previous section.

We conclude that the system is possibly broken because the objectives of supersiting from a land use standpoint are unclear in terms of the public interest – there appears to be little, if any difference, between energy facilities and other major land uses that are sited at the local level, and there are few, if any similarities between supersiting of energy facilities and supersiting of corrections and light rail facilities.

The one area of possible need for supersiting is with linear facilities (transmission lines and pipelines) that pass through multiple jurisdictions. However, in the possible need to have supersiting of linear facilities, there should be a corresponding examination of the cumulative impact of transmission lines and a greater sensitivity to local communities that are particularly impacted.

Below we examine five possible options for addressing the land use process, with two different assumptions about the EFSC need standard. On the next page is a table summarizing these options.

LAND USE OPTIONS

Assumption: Need for facility standard is retained	Assumption: Need for facility standard is abolished
Option A: Status Quo Option B: Delegate land use decisions to local government (Path A only) Option C: Provide a local option for land use decision (Path A or B)	Option D: Retain supersiting • D1: Retain EFSC for land use; or • D2: Dissolve EFSC; assign land use to LCDC Option E: Delegate all land use authority to local government

Assumption: The EFSC need for facility standard is retained.

Option A: Status Quo

Minor or no changes are made in the land use siting of energy facilities.

Option B: Eliminate Path B; require Path A for all proposals.

Under this option, the Path B land use approval approach would be abolished and all applicants would be required to use Path A. ODOE staff could assist local governments with their review of siting proposals, much in the same manner that DLCD and other state agencies help them with other siting decisions. Some local governments would need to develop siting standards, although it is likely that not all local governments would need to do so. It might be possible to identify those counties and cities where energy development potential exists and direct those jurisdictions to develop standards. Another approach would be to have a state-local task force develop a model ordinance for adoption by local governments that would need one.

This option could also include licensing by ODOE in addition to local government approval, much in the same way that DEQ licenses landfills. ODOE licensing could address issues that are greater than the local government capability to address such as need (if that remains a standard), global warming and other similar issues.

Option C: Provide a local option for land use decisions.

The current system allows the applicant to decide whether to take Path A or Path B approval. Local government does not have an option. Under this scenario, local

government would determine which option to take for all energy facilities, or all energy facilities of a particular type.

Providing this option to local government could be done with some provisos. EFSC or LCDC, after appropriate changes to state law to allow this option, could develop administrative rules to define when local governments could take such a local option. For example, perhaps they would demonstrate that their plans and ordinances adequately address energy facilities, including having appropriate safeguards and coordination to address the range of issues involved. These plans and regulations could be approved by LCDC through post-acknowledgment proceedings.

Assumption: The EFSC need standard is abolished.

Option D: Retain supersiting for land use decisions.

Elimination of the need standard abolishes a large part of EFSC's responsibility and opens up the question of how to manage the remaining issues in the siting process. [10] Under this scenario, land use and environmental issues could be addressed under one of two options.

D1. Retain the EFSC for land use and environmental issues related to siting. This would be the same process that is used now minus the need standard. A few changes may be desirable to address some of the weaknesses of the current process.

D2. Dissolve EFSC and assign land use and environmental siting authority to LCDC. This would establish a new role for the Commission and its staff.

Option E: Return all land use siting authority to local government.

This would be similar to Option B, except that under this option, the land use decision would not be part of an overall EFSC process, so presumably there would be no possible override of a local land use action. ODOE could provide the same technical assistance to local governments, and could even license facilities as part of the overall siting process.

Another option, a hybrid not shown on the chart, is a combination of returning land use authority for a certain class of facilities to local government but retaining supersiting authority for another class based upon a clearer definition of the public and state interest in siting. For example, local governments could be granted the authority to site

[10] One of the major arguments in favor of eliminating the need standard is that the market can respond to the need and investors, not rate payers, will assume the risk. If this argument wins out, we assume that other factors such as financial and management ability would also be eliminated as criteria.

thermal facilities, except nuclear, under 500 megawatts (MW); state supersiting could continue for larger facilities and multi-jurisdictional linear facilities.

VII. FUTURE STATE ROLE IN ENERGY FACILITY SITING

Should land use supersiting for energy facilities be abolished, perhaps along with the need standard, there are still several areas for a continued state role. At a minimum, the following are possible continuing or new roles for the State of Oregon and the Oregon Department of Energy in land use-related energy facility siting.

1. Examine state energy policy and determine its implications for facility siting at the regional or local level.
2. Provide technical assistance to local governments in the land use process, including the possible development of model regulations for energy facilities.
3. Manage and/or regulate state-level issues concerning energy facility siting such as global warming, radioactive waste management, and electromagnetic field research.
4. Continue to provide a land use supersiting mechanism for multi-jurisdictional linear facilities (transmission lines and pipelines) and nuclear generating facilities.
5. Monitor facility siting and evaluate issues related to either concentrations or deficits of energy production in various areas of the state.
6. License energy facilities for compliance with state standards for safety and emissions.

As pointed out earlier in the report, Goal !3, the energy goal, has never been reviewed and updated since it was adopted over twenty years ago. Given the changed picture of energy resources, economic conditions and technology, a review of Goal 13 is warranted. This review should be a joint effort of the Oregon Department of Energy and the Department of Land Conservation and Development with local government involvement.

VIII. CONCLUSIONS

Although the issue of supersiting major facilities has been examined in the past ten years by two task forces, the state's energy policies, including land use planning Goal 13, have not been reviewed and updated for more than 20 years. The energy environment has changed substantially since that time.

Except for linear facilities and perhaps major facilities like nuclear thermal generating plants, there does not appear to be a compelling reason to provide supersiting for energy facilities, or conversely, to disallow local governments the authority to site them as part of their land use approval process. At least four options exist for considering change.

From a practical standpoint, some kind of supersiting authority for multi-jurisdictional linear facilities probably needs to be in place.

APPENDIX A
OREGON BENCHMARKS RELATED TO ENERGY[11]

Unspoiled Natural Environment

	HISTORICAL							TARGETS		
Air	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
I *Urgent* ♦ *Core* 108. Percentage of Oregonians living where the air meets government ambient air quality standards	30%	90%	54%	51%	58%	100%		100%*	100%	100%
109. Carbon dioxide emissions as a percentage of 1990 emissions			100%	106%	108%			100%	100%	100%

	HISTORICAL							TARGETS		
Water	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
I *Urgent* 110. Miles of assessed Oregon rivers and streams not meeting state and federal government in-stream water quality standards			1,100		1,100			723	75	0
111. Groundwater quantity:										
♦ *Core* 112. Groundwater quality:										
a. Percentage of area where groundwater is used that has been assessed over the past 10 years	6.2%		6.9%				18.6%		21%	25%
b. Percentage of area assessed that does not meet drinking water standards	0.1%		2.5%				4.2%		6%	8%
113. Percentage of Oregon key rivers and rivers with in-stream water rights meeting in-stream flow needs										
a. Less than 9 months out of the year							47%	35%	35%	25%
b. 9 to 11 months out of the year							24%	30%	30%	30%
c. 12 months out of the year							30%	35%	35%	45%

[11] Oregon Benchmarks, Report to 1995 Legislature. Oregon Progress Board, December 15, 1994.

Reasonable Costs of Doing Business

	HISTORICAL							TARGETS		
Taxes	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
224. Oregon's rank among Western states in business taxes as a percentage of gross state product			3rd (3.6%)	3rd (3.4%)						

	HISTORICAL							TARGETS		
Workers' Compensation	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
225. Oregon's ranking among states in workers' compensation costs			8th		22nd		32nd	20th-25th	20th-25th	20th-25th

	HISTORICAL							TARGETS		
Health Care Costs for Businesses	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
226. Oregon's ranking among states in health care costs	31st	38th	40th	42nd				40th-42nd	40th-42nd	40th-42nd
227. Oregon health care costs relative to 1980 costs (inflation adjusted)	$100	$142	$142	$145	$148	$151		$150	$150	$150

	HISTORICAL							TARGETS		
Energy Rates and Services	1980	1989	1990	1991	1992	1993	1994	1995	2000	2010
228. Oregon's total energy bill as a share of state personal income		10.2%	10.2%	9.8%	9.3%			10.0%*	9.8%	9.5%
229. Oregon average electricity rates as a percentage of the national average	54%	66%	63%	63%	63%			70%	75%	80%
230. Oregon average industrial electric rates as a percentage of the national average	43%	70%	67%	65%	66%			71%	75%	80%
231. Oregon natural gas rates as a percentage of national average	164%	108%	111%	106%	99%			120%*	115%	110%

APPENDIX B
EXAMPLES OF HOW USES WITH IMPACTS ARE MANAGED BY SELECTED JURISDICTIONS IN OREGON

Airports

Jurisdiction	How Permitted	Issues	Standards for Approval
Umatilla County	Pendleton Airport Hazard Overlay District	• Safety of landing aircraft • Safety of surrounding uses • Height of buildings and vegetation • Land use	• Approach zones, transitional zones, horizontal zones and conical zones • Height limitations • Use restrictions • Marking and lighting standards
Washington County	Type II in Industrial zone	• Noise • Safety • Air quality • Access	• Approval of FAA, ODOT (Aeronautics), DEQ • Master Plan • Air quality and noise standards • Arterial or interstate highway access • Height standards
Deschutes County (Bend Urban Area)	Not provided		

Landfills (Solid Waste Disposal Sites)

Jurisdiction	How Permitted	Issues	Standards for Approval
Umatilla County	Landfill Overlay Zone	• Land suitability • Screening from adjacent uses • Compatible with adjacent uses	Report or letter from DEQ; testimony from a qualified engineer, hydrologist, agronomist
Washington County	Discretionary in farm and forest zones	• Compatibility with farm uses • Stability of land use pattern	• Ordered or approved by DEQ • Access standards • Findings regarding no impact on farm uses or practices • No significant adverse impacts • The public interest is served

Deschutes County (Bend Urban Area)	• Surface Mining Zone		• Approval by DEQ

Silicon Chip Manufacturer

Jurisdiction	How Permitted	Issues	Standards for Approval
Umatilla County	Zoning Permit		• Maximum 200 employees • Less than 21 acres land • Less than 6.8 million BTU from all energy sources
	Conditional use permit -- uses exceeding standards for a zoning permit or uses involving hazardous materials	• Compatibility • Noise, dust, vibration, odors	• Compatibility with other uses • Noise, dust, vibration and odors won't adversely affect existing uses • Compliance with comprehensive plan text
Washington County	Type II in industrial zones	• Site design • Traffic • Noise, vibration	Master plan approval: • Design • Use of materials and landscaping • Compatible arrangement of uses and structures • Lay out of buildings and streets to maximize solar access and to conserve energy
Deschutes County (Bend Urban Area)	Permitted in light and heavy industrial zones	• Access • Parking • Traffic	Site plan approval

APPENDIX C
SAMPLE OF ORDINANCE PROVISIONS FOR ENERGY FACILITIES

UMATILLA COUNTY

Zoning District	Definition	How Permitted	Examples of Standards and Conditions
Exclusive Farm Use (EFU)	Commercial utility facilities for the purpose of generating power for public use by sale	Conditional	• Compatible with farm uses; non interference with farming practices • On land generally unsuitable for production • Impacts on public services; soils and drainage; agricultural productivity; land use compatibility; sanitary disposal system; ESEE consequences
	Local feederlines; minor betterment of transmission lines; gas utility lines	Permitted outright	None
Heavy Industrial Zone (HI)	Utility facility	Zoning Permit	Site Plan: • Landscaping • Access, parking • Stream setback for sewage disposal systems
Future Urban (FU-10) around Hermiston UGB	Utility facility	Conditional	• Height limitation • Stream setback for sewage disposal systems

WASHINGTON COUNTY

Zoning District	Definition	How Permitted	Examples of Standards and Conditions
Exclusive Farm Use (EFU)	Utility facility (commercial) for the generation of power for sale for public use and transmission towers over two hundred (200) feet in height.	Type III (discretionary)	• Need for the facility based upon utility's master plan • Present and future land area need • Measures to minimize damage to paved roads, natural resources or open space • Site plan; compatibility with surrounding uses • Limitations on underground utilities providing hookups to rural uses

Zoning District	Definition	How Permitted	Examples of Standards and Conditions
			• Goal 2 Exception required on more than 12 acres (for power generation facilities)
	Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale	Type II process (site plan approval)	• Need for the facility based upon utility's master plan • Present and future land area need • Measures to minimize damage to paved roads, natural resources or open space • Site plan; compatibility with surrounding uses • Limitations on underground utilities providing hookups to rural uses
Industrial District (IND)	Public utility (definition includes production and transmission)	Type I or II	Same as above
Future Development 10 (FD-10)	Public utility (definition includes production and transmission)	Type III	Same as above

DESCHUTES COUNTY (BEND URBAN AREA)

Zoning District	Definition	How Permitted	Examples of Standards and Conditions
Urban Area Reserve (UAR-10)	Hydroelectric facility	Conditional use	• Minimal adverse impact on surrounding area • Maintain or enhance scenic, environmental, aesthetic, recreational, fish and wildlife, water quality in the river • Control sediments • Maintain water temperature • No discharge of pollutants • Protect bank habitat • DEQ requirements for noise, water quality • Minimum streamflows
	Utility substations	Conditional use	• May exceed height limits of zone • Best locations • Will not result in uneconomic parceling of land • Minimize effect on scenic values

General Industrial Zone (IG)	Public utility buildings and yards	Permitted outright	None
	Hydroelectric facility	Conditional use	Same as in UAR-10
Highway Commercial Zone (CH)	Public buildings and public utility structures as may be appropriate to the CH zone	Permitted outright	None
	Hydroelectric facility	Conditional use	Same as UAR-10

ADDENDUM 1

RE: COMPARISON OF MAJOR LAND USES IN OREGON WITH ENERGY FACILITIES

As the Task Force requested, we investigated other major land uses that might be compared with an energy generating plant. Attached is a matrix which illustrates other major land uses and compares various data, including land use approval processes.

Interpreting the Table

I need to caution you about this information, particularly information in the last three columns. Because it is difficult to generalize about any of these land uses, we used specific examples. For the most part, we believe these examples to be reasonably representative of these types of uses. At the same time, any of these land uses could be different in size, cost, number of employees and other factors, and could be significantly different in terms of impacts depending on where they propose to locate. For example, any could have impacts on wetlands or other natural resources, if those are involved with a particular site. In these cases, coordination would be required with the Division of State Lands, Fish and Wildlife Department and perhaps others.

The column on "typical impacts" shows you all the major issues that were associated with these uses that would be typical of others, but not necessarily all the issues. The next column shows some of the state and federal coordination typical in the land use process. Finally, in the last column we show what was/is required in the specific example, but local land use approval requirements could vary considerably from one jurisdiction to another. Note that this column does not show permits typically required after land use approval is granted, such as building or grading permits, because these are not usually part of the land use process.

What is a Land Use Process?

Part of the difficulty in discussing whether the siting process for energy facilities should be conducted at the state or local level relates to the fact that different people have different concepts about what a "land use process" means, and the land use process can vary from one jurisdiction to another. An understanding of the land use process affects one's perception about whether local jurisdictions in Oregon can manage siting energy facilities.

Some people have a very broad notion of the concept – that it is an "umbrella" process under which all required permits are coordinated. Others see it as much narrower, to

only an issue of zoning. It is really somewhere in-between -- at least here in Oregon. While there is a danger in generalizing, Oregon's local land use processes typically identify and mitigate only site and external impacts of a proposed use -- traffic, noise, odors, public facility and service needs, aesthetics, etc.[12] These impacts are often of interest from a regulatory standpoint to some state and federal agencies as well as local government, hence the coordination that is required.

Other than a use's outward appearance, however, the land use process does not usually involve itself with such things as building (engineering) design and construction and operational standards for health and safety. This is not because these are not important, but because these are usually seen as relating to the use and operation of buildings but not strictly the use of land. [13] These standards are regulated by other agencies or laws and are usually required to be met before building permits are issued or buildings occupied. The land use process is almost never concerned with managerial and technical capability of an applicant to conduct the business.[14]

The land use process for a particular type of use can vary between jurisdictions and can also be different within one particular jurisdiction depending on where that use is allowed through zoning. For example, a use that is allowed outright in a particular zone is "nondiscretionary", which means that the proposed use must be allowed to locate as long as it can meet minimum, identifiable standards such as building height and setbacks of the zoning district in which it proposes to locate.

A use that requires a conditional use or special use permit is considered "discretionary". This usually means that a public hearing is employed to help the jurisdiction determine whether the use meets certain standards that are subject to interpretation and judgment and prepare findings. In a case such as this, the use may or may not be approved, or the use may be approved with conditions, the usual case.

Most jurisdictions require some kind of site plan approval as part of the land use process before issuing building permits. The requirements for site plan approval vary considerably from one jurisdiction to another. Some have a very minimal process to address site requirements and others have a more extensive process with greater detail about site design, design and location of improvements and even the design (appearance) of buildings, signs and landscaping.

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[12] ORS defines a land use decision as the adoption, amendment or application of a comprehensive plan or land use regulation. Thus, in the context we are discussing, it is the application of the plans and regulations to a particular use that is a land use decision.

[13] There can be exceptions to this statement. Sometimes building code, fire and life safety code and other regulations affecting building and construction can be important in determining whether a use can occupy a piece of land. These regulations can come into the picture at the land use permitting stage and not simply deferred to a later point in time.

[14] An exception to this statement is that local governments frequently require some performance instrument to assure that required public improvements will be completed to the jurisdiction's standards, for example, as part of a subdivision. Proof of financial capacity can be required as part of a performance bond or other security.

Some jurisdictions require applicants to obtain and provide proof of other permits, such as DEQ permits, before issuing their own land use or building permits; others only require that they be obtained but do not monitor or enforce these requirements themselves.

How the Land Uses in the Table Compare

Of the land uses we examined, all except one potentially require more land area than a power generating plant. Most have substantial impacts that must be addressed in the local land use permitting process, even if that process entails only a site plan approval. Many require coordination with state and federal agencies, such as the Oregon Department of Environmental Quality (DEQ), to assure that emissions and discharges meet allowable standards.

Probably the most significant difference between these land uses and a 500 MW thermal generating plant is its construction cost compared to other land uses. Generating plants are considerably more expensive given their size than these other land uses. However, this factor does not have any significance in a land use process.

The example of the Sony Plant in Springfield used here, while not a silicon chip plant, is substantially similar to the Eugene Hyundai facility and Intel facilities in Washington County, which are chip plants, in terms of how it looks from the outside, the impacts on the surrounding area in terms of traffic and infrastructure needs, and how it is addressed in the land use process. However, there may be some differences between the two in building code requirements for ventilation systems and in fire and life safety standards that are very important but do not relate to the land use process. In addition, the large silicon chip plants can cost two to three times a 500 MW generating plant.

Conclusion

From a land use standpoint, energy facilities are not substantially different from a number of other significant land uses that local governments have the authority to site. Many require impact analysis of a number of issues, coordination with state and federal agencies and conditions of approval requiring compliance with state and federal regulations.

Land Use Comparison
Oregon Department of Energy State Energy Facility Siting Task Force

Facility	Size	Cost	Zoning	Number of Employees	Typical Impacts	State/Federal Coordination	Local Land Use Approval
Electronics Manufacturing Plant Example: Sony Optical Systems Plant, Springfield	334,000 sq. feet 38.64 acres	$51 million	Campus Industrial - allowed use	400	Parking (800 spaces required); impervious surface impacts; point source and non-point source emissions	Lane Regional Air Pollution Authority; OEDD (grants); utilities	Permitted outright; site plan review
Paper/Pulp Plant Example: Port Townsend Paper, St. Helens (applied for permit but did not locate) - estimates	10 - 40 acres	$200 - $800 million	Heavy Industrial	400 - 800	Traffic; water quality; air quality; hazardous materials impacts; other potential off-site impacts as identified	Water and air pollution permits (DEQ); federal permits through DEQ	Conditional use permit required for facilities requiring state permits; site design review
Regional Shopping Center Example: Washington Square	50 - 60 acres 1.2 million sq. feet	$100 + million *	General Commercial	1,200 - 2,000 (seasonal changes)	Traffic: 8.5 million cars per year	Potential effects on air quality in a non-attainment area	Permitted outright; site plan review
Sanitary Landfill Example: Deschutes County proposed new landfill	80 - 150 acre footprint on 350 acre site	$6 million - first cell; built-out could exceed $50 M.	Best potential sites located in Surface Mining Zone (SM)	7 - 8	Potential impacts to sensitive wildlife species; air and water quality effects; traffic a non-issue due to isolated location	DEQ water quality, operating permits required	Requires conditional use permit in EFU or zone exception in SM zone
Food Processing Plant Example: Specialty Foods, Morrow Co.	30,000 sq. feet; 12 acres	$1 - 1.5 million	Industrial - allowed use	12 - 80 (depending on season)	Traffic impacts on high-speed road - required turning lane; water availability; odor	None	Permitted outright

* if built today

Facility	Size	Cost	Zoning	Number of Employees	Typical Impacts	State/Federal Coordination	Local Land Use Approval
Sewage Treatment Plant Example: City of McMinnville	14 acres	$33.6 million	Yamhill County Exclusive Farm Use (EFU 40)	14 - 20	Clean Water Act requirements on impacts to wetlands, groundwater and sensitive species	Permitted through DEQ and required to reduce phosphorous discharges into Yamhill River; met federal guidelines	Conditional use with county Planning Director approval; hearing upon request - none requested
500 Mw Thermal Generating Facility Example: Hermiston Generating	17 acres	$300 (±) million (est.)	Industrial	26	Air quality, aesthetic impacts	Federal clean air act through DEQ permit requirements	Conditional use permit

Information Sources:

1. Electronics Manufacturing Plant: City of Springfield Economic Development Planning staff
2. Paper Plant: No paper or pulp mills have been sited or constructed in Oregon during the last ten years. Information is based on proposed Port Townsend paper and existing Boise Cascade pulp plants, obtained from DEQ and City of St. Helens planning personnel.
3. Regional Shopping Center: Washington Square General Manager.
4. Sanitary Landfill: Deschutes County Solid Waste Department.
5. Food Processing Plant: Port of Morrow.
6. Sewage Treatment Plant: City of McMinnville planning and engineering staff.
7. Thermal Generating Facility: Pacific Energy Systems

ADDENDUM 2

RE: COMPARISON OF OTHER STATE ENERGY FACILITY SITING LAND USE PROCEDURES WITH OREGON'S

As requested by the Task Force, we obtained information from four other western states to compare siting procedures, particularly land use -- Idaho, Montana, Washington and California.

Each state is different in how it addresses land use and none is like Oregon.

In Montana, which has state siting authority, land use approval is given at the local level but can be overriden by the state authority. Washington and California, which also have state siting authorities, rely on local comprehensive plans and zoning to determine compliance and also have authority to override these regulations. Developers of energy facilities in all three states are urged to work with local government to resolve local land use issues before they get to the state level -- it appears that the state authority to override is only done as the last resort. In Washington, specific rules determine when and how to override local land use laws. In Montana and California, there has to be a compelling need to override local land use laws; these states, however, are also reviewing the need standard and do not know how land use processes will be affected if the need standard is eliminated.

In Idaho, there is no state process or override authority, even for transmission lines -- all land use approvals are at the local level.

Below, we briefly discuss each state process.

Idaho

The State of Idaho does not have a defined state process for siting of energy facilities. Applicants must obtain individual permits from state and local agencies that have permitting authority. For example, any facility that will emit air contaminants, including odors, must apply for a Permit to Construct from the Idaho Department of Health and Welfare. The Idaho Public Utilities Commission (IPUC) must issue a certificate that "the present or future public convenience and necessity require or will require such construction" before a qualifying (i.e., regulated) electrical or water corporation begins constructing a line, plant, or system, or extension of any of these. These regulations do not apply to independent power producers. There have only been two cases in the past 20 years where the public convenience and necessity standard has been an issue before the IPUC.

All cities and counties in Idaho are required to have comprehensive plans and zoning regulations. Local governments manage the land use permitting process. This includes transmission lines that pass through more than one jurisdiction. If a proposed facility is in conflict with a local comprehensive plan, the developer has to seek a plan amendment to eliminate the conflict. If a local comprehensive plan and land use regulations do not provide for energy facilities, the developer may have to propose changes to allow the facility. Various kinds of land use permits may be required, including rezoning, special or conditional use permits, variances and zoning certificates.

Montana

Authorized by the Major Facility Siting Act, Montana has a Board of Environmental Review within the Montana Department of Environmental Quality. The Board conducts comprehensive reviews of proposals to construct and operate facilities for generating, converting or transmitting energy. Included in the review and certificate process is the "basis of the need for the facility."

Before any major action significantly affecting the quality of the environment is taken, a state agency must prepare an environmental assessment (EA) for a small facility, or an environmental impact statement (EIS) for a large facility discussing the environmental impacts of the proposed action. If the project requires two or more agency permits, one agency will be designated as a lead agency for the EIS. The EIS must discuss alternatives to the proposal, irretrievable commitments of resources and the relationship between short-term uses of the environment and long-term productivity.

Land use planning and zoning in Montana is optional for local governments. If a city or county has zoning, local permits may be required, depending on the specific provisions of the ordinances. The Siting Act provides for an override of local planning and zoning requirements but an override is done only through a balancing of all resource and environmental issues.

Washington

The Washington Energy Facility Site Evaluation Council (WEFSEC), with a chair appointed by the Governor and representatives from 13 state agencies, provides a "one-stop" process for non-hydro energy facility siting in Washington. When an application is received, the WEFSEC determines whether the proposal is subject to the State Environmental Policy Act (SEPA). If so, an environmental impact statement (EIS) is prepared by the agency.

Washington does not have a direct requirement to justify the need for the proposed facility. However, need as an issue can come up in one of two ways. First, the EIS is

required to justify need. Second, the WEFSEC conducts an adjudicated process, and if need comes up as an issue, the Council can choose to address it.

The WEFSEC determines directly whether a proposal complies with a local comprehensive plan. Within 60 days of an application's filing, the Council holds local hearings on land use compatibility. If a local government enters a letter ("certificate") into the record certifying compliance of the facility with local plans and ordinances, this is treated as prima facie evidence of compliance. If it does not submit this certification, the Council must make findings. If the local government testifies negatively to the compliance issue and/or findings are negative, the applicant must seek to resolve the issue at the local level. As a last resort, if necessary and desirable, the Council can follow specific rules to supercede local government authority and site a facility.

California

California regulates the siting of all thermal energy facilities over 50MW through the California Energy Commission (CEC). All hydro facilities are regulated through the Federal Energy Regulatory Commission (FERC) and the California Department of Water Resources. There is no state regulation of wind facilities, but the state has done considerable work on the technology and environmental impacts and is a resource for counties who handle the permitting.

The state currently has a need standard but it is under review and may be abolished by the end of the summer.

The CEC makes determinations (findings) of compliance with local general (comprehensive) plans and zoning regulations, and if necessary, can override local plans and ordinances and site a facility which is not in compliance. In practice, however, developers are urged to work with local government and resolve land use issues before they get to the CEC. There have only been two instances in recent years when the CEC had to override a local government plan and ordinance to site a facility.

Oregon

Oregon has an Energy Facility Siting Council (EFSC) that has the authority to site all energy facilities falling within its siting regulations through issuance of site certificates. This provides a "one stop" process for siting which also includes environmental standards and establishing the need for the facility.

All Oregon's cities and counties are required to prepare and maintain comprehensive plans and development regulations in compliance with statewide planning goals. An applicant applying for a site certificate can select whether to obtain land use approval for a proposed facility by seeking local land use approval (Path A) or requesting the EFSC to make the land use decision (Path B). If Path A is chosen, the local decision is

incorporated into the EFSC siting decision and is not modified by the EFSC. In a Path B situation, the EFSC uses the local land use plan and regulations as the basis for establishing criteria for approval, but can override this criteria by making findings directly against the statewide planning goals. As a last resort the EFSC can also make an "exception" to the statewide planning goals and site a facility under Path B.

COMPARISON OF STATE ENERGY FACILITY SITING PROCEDURES

State	Mandatory Land Use Planning or Zoning	State Siting Authority	Who Makes Land Use Decision	State Authority to Override Local Land Use Plans or Decisions of Local Governments
Idaho	Yes	None	Local government	No
Montana	No; optional	Board of Environmental Review	If zoning exists, local government. Where zoning does not exist, there is no land use decision	Yes
Washington	Yes	Washington Energy Facility Siting Evaluation Council (WEFSEC)	WEFSEC	Yes
California	Yes	California Energy Commission (CEC)	CEC	Yes
Oregon	Yes	Energy Facility Siting Council (EFSC)	Local government or EFSC (applicant's choice)	Path A, No; Path B, Yes