



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

April 10, 2007 Special Meeting Minutes

1. CALL TO ORDER

Chair Jim Luce called the April 10, 2007 special meeting to order at 925 Plum Street S.E., Building 4, Room 308, at 10:30 a.m.

2. ROLL CALL

Council members present were:

Jim Luce	EFSEC Chair
Dick Fryhling	Community, Trade & Economic Development
Hedia Adelsman	Department of Ecology
Jeff Tayer	Department of Fish and Wildlife
Judy Wilson	Department of Natural Resources
Tim Sweeney	Utilities and Transportation Commission
Vern Eaton	Cowlitz County Representative
Justin Erickson	City of Kalama Representative

Staff in attendance were:

Allen Fiksdal – EFSEC Manager, Mike Mills – Compliance Manager, Kyle Crews – Assistant Attorney General (AAG), Tammy Talburt – Administrative Secretary.

Guests in attendance were:

Katy Chaney – URS Corp., Laura Schinnell – Energy Northwest, Kirk Deal – PAC NW Council Carpenters, Brett Vanderheuvell – The Columbia River Keepers, Tom Krueger – Energy NW, Darrel Whipple – Willapa Hills Audubon Soc., Scott Williams – Puget Sound Energy, Mike Tribble – CFE/AGO, and Don Jenkins – Longview Daily News.

Guests attending via phone:

Liz Thomas – Kirkpatrick & Lockhart Preston Gates Ellis LLP, and Bruce Rader – Port of Kalama.

3. LAND USE CONSISTENCY DISCUSSION

Mr. Allen Fiksdal, indicated that the purpose of the special meeting was to discuss issues associated with the pending land use consistency determination decision for the Pacific Mountain Energy Center (PMEC) prior to the Council taking any action on the matter. The meeting is intended as a workshop to help members understand the Council's rules and process for determining land use consistency and to consider the specific issues that have been raised for the PMEC project. Mr. Fiksdal referred members to the meeting packets that contained the transcripts from the March

13, 2007 reconvened Land Use Hearing; WAC 463-26 Public Information and Land Use Hearing; copies of the comment letter received from the public; and copies of letters from the City of Kalama and Cowlitz County clarifying their land use and zoning regulations related to the PMEC project. Council member Judy Wilson was asked to lead the discussion because of her experience with county government.

POINT 1: What is the Council’s understanding of Land Use Consistency?

Ms. Wilson stated that the intent of the workshop was to help members understand the factors that need to be considered in making a land use consistency determination. The Council had asked AAG Kyle Crews to research and report back on previous Council land use actions. Mr. Crews indicated that he had reviewed earlier land use decisions and found that the Council had determined that land use is consistent unless the project is prohibited. He cited Council Order No. 579 for the Northern Tier Pipeline company, Application No. 76-2 as an example of the Council’s interpretation of land use consistency:

“The meaning of Consistent and in Compliance. The Council’s unvarying interpretation of the terms has been “permitted absolutely or permitted conditionally.” That is to say that when an energy facility is permitted without reservation by provisions of a plan or code, or when a facility is permitted only if it meets certain conditions imposed by a plan or ordinance, the facility is consistent and in compliance with the applicable plan or ordinance. Only if a plan or code unequivocally prohibits a facility is that facility inconsistent and out of compliance.”

Mr. Crews concluded that from the very beginning, Council findings on land use have been to determine a project consistent, unless it is otherwise prohibited by a county plan or ordinance. He noted that where the language is silent, the Council has found that if the county land use plan does not specifically address the energy facility as being prohibited, it is permitted.

POINT 2: Are Critical Areas Ordinance under this part of the process or do they come into play further along in the process?

Council member Hedia Adelman, Department of Ecology, expressed concern that she views the Critical Areas Ordinances as part of the land use plan and believes that the Council needs to define the critical areas at this time. Council member Richard Fryhling, Community, Trade and Economic Development, stated that as an element of the land use consistency determination, Council laws and rules clearly do not include the Critical Areas Ordinances. The Council will be addressing these types of ordinances and issues in the EIS and in the adjudicative hearings. At that point, if more information is needed on the Critical Area Ordinances or related issues, it can be requested then.

Mr. Fiksdal referred members to the February 13, 2007 letter from Cowlitz County that states, “This letter is intended to serve as a certificate of land use consistency in conformance with WAC 463-42(26).” Council rules provide that where certificates from local authorities attest to consistency, then such certificates will be regarded as *prima facie* proof of consistency with land use plans and zoning ordinances.

With the County’s letter, and based on its rules and prior land use decisions, the Council is at a point where it can make a land use consistency determination for the PMEC project. Other issues, including critical areas, will be addressed through the EFSEC siting process.

Chair Luce stated that precedence shows that in the past, the Council has addressed land use consistency without determining whether or not critical areas are a part of that consideration. That is not to say that when the Critical Area Ordinances or other issues are examined in the SEPA process or the adjudication, that there will either be, required mitigation, or the worst case or best case scenario depending on your view point, that you just can't build there, so we're not by-passing those issues in any sense of the word. What we are doing is addressing those issues at the proper time, while paying deference to the County's interpretation of its own ordinances and law. The risk is on the applicant. Precedent and history guide the Council to make its land use determination based on a County's assurance that the proposed P MEC site complies with its laws.

Chair Luce summarized discussion points stating that the Council is only looking at the project's consistency with local land use and zoning ordinances; that there is not anything else before us; and the law needs to be followed. The decision today is about land use and zoning, not Critical Area Ordinances, which are development environmental regulations.

Following further discussion, members agreed that a motion finding the P MEC project consistent with Cowlitz County and City of Kalama land use plans and zoning ordinances would be presented at the monthly meeting this afternoon for consideration. If approved, staff would be directed to prepare an order documenting the Council's determination.

The meeting was adjourned at 11:41 am.