



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL
PO Box 43172 • Olympia, Washington 98504-3172

October 14, 2008 Monthly Meeting Minutes

1. CALL TO ORDER

Chair Jim Luce called the October 14, 2008 monthly meeting to order at 905 Plum Street S.E., Room 301, at 1:33 p.m.

2. ROLL CALL

Council members present were:

Jim Luce	Chair
Dick Fryhling	Community, Trade & Economic Development
Judy Wilson	Department of Natural Resources
Jeff Tayer	Department of Fish and Wildlife
Dick Byers	Utilities and Transportation Commission
Hedia Adelman (excused)	Department of Ecology

Staff in attendance were:

Allen Fiksdal - EFSEC Manager, Stephen Posner - Compliance Manager, Jim LaSpina - EFS Specialist, Tammy Talburt - Administrative Assistant and Kyle Crews, AAG AGO.

Guests in attendance were:

Rob Smith - Chehalis Power, Todd Gatewood - Grays Harbor Energy, Michael Goldstein Grays Harbor Energy, Steven Bonsma - Grays Harbor Energy, Jennifer Diaz - Puget Sound Energy, Scott Williams - Puget Sound Energy, Karen McGaffey - Perkins Coie, Mark Anderson - Community, Trade & Economic Development Energy Policy, Robert Kruse - Friends of Wildlife and Wind Power, Elyse Kane - Washington State Department of Fish and Wildlife, Bruce Marvin - Counsel for the Environment, David Bricklin - Bricklin, Newman & Dold, LLP, Darrel Peebles - Attorney, and Tim McMahon - Stoel Rives.

Guests attending via phone:

Robert Nielson - Energy Northwest.

3. ADOPTION OF PROPOSED AGENDA

The agenda was presented to the Council for amendments or additions; the agenda was approved as submitted.

4. MINUTES

Staff presented the September 9, 2008 monthly meeting minutes for the Council's approval.

Motion: Council member Wilson moved the Council approve the August 12, 2008 meeting minutes as presented. The motion was seconded by Council member Fryhling. The motion was approved.

5. PROJECT UPDATES

Kittitas Valley Wind Power Project

<i>Project Update</i>	<i>Jim Laspina, Staff</i>
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Mr. Jim LaSpina, EFS Specialist reported that the Kittitas Valley Wind Power Project plan reviews are almost completed. Two plans are being reviewed by Department of Natural Resources. After that review is complete, the Council Manager will issue a letter stating that the plan review is complete. On October 13, 2008, EFSEC staff, Horizon staff, Horizon's construction staff and the other regulatory agencies held a kick-off meeting for site preparation culvert work. Mr. LaSpina also informed the Council the Stormwater Pollution Prevention Plan (SWPPP) public comment period ends on October 17, 2008 at 5:00 p.m. Four comments have been received to date. It is expected that the SWPPP will be approved by the end of the month barring any substantive comments.

Columbia Generating Station

<i>Project Update</i>	<i>Robert Nielson, Energy Northwest</i>
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Mr. Robert Nielson reported to the Council that the Columbia Generating Station (CGS) is operating at 100% Power on the 52nd day on line. Plant activities include permanent repairs to the Reactor and Turbine Building siding damaged by high winds. Siding panel replacement is to begin next week. On September 20, 2008, pavement resurfacing and road widening work on the CGS main entrance was completed and the road was reopened to traffic. On September 9-10, 2008, an Emergency Preparedness Exercise was successfully completed. The exercise involved federal, state, and local emergency response organizations and was evaluated by the NRC and FEMA with no major concerns. The Institute of Nuclear Power Operations (INPO) will begin their biennial evaluation of CGS on October 20, 2008. INPO is an industry group created to promote safety and reliability excellence in the operation of power nuclear plants.

Ecology is working with Energy Northwest to close the October 4, 2007 Administrative Order #5143 for the Columbia Generating Station. Ecology and EPA conducted a close-out inspection on September 23, 25 and 29, 2008 with no issues identified to date.

EFSEC Resolution No. 244, dated August 22, 1988, requires that the CGS Site Restoration Plan be reviewed at least every five years. Accordingly, on August 31, 2008, Energy Northwest submitted to EFSEC a revised CGS Decommissioning Plan. The only changes to the plan were to update the current status of the decommissioning trust account. Upon review, EFSEC staff raised two questions, to which Energy Northwest responded. The first regarded the disposition of spent fuel. The plan describes the initial removal of spent nuclear fuel from the plant into interim or, if available, permanent disposal facilities. Accordingly, the spent fuel will either be:

- removed to the Dry Cask Storage Facility, commonly referred to as the Independent Spent Fuel Storage Installation (ISFSI), which was included as a technical amendment to the Site Certification Agreement on September 18, 2000 via Resolution No. 295, or
- managed by the US Department of Energy within the Integrated Used Fuel Management program (i.e., reprocessing, permanent disposal at deep geologic repository at Yucca Mountain, Nevada).

EFSEC also questioned the source of the updated fund information. This information was provided by the Bonneville Power Administration (BPA).

Mr. Nielson reported that there are actually two account plans, the decommissioning plan fund is \$124.3 million and the site restoration fund \$17.2 million as of the end of August.

Mr. Stephen Posner, Compliance Manager, reported to the Council that the final report on the Emergency preparedness excise will be issued by FEMA in approximately 90 days.

Satsop Combustion Turbine Project

<i>Project Update</i>	<i>Todd Gatewood, Grays Harbor Energy</i>
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Mr. Todd Gatewood, Grays Harbor Energy (GHE) reported that there were no accidents or injuries in the month of September. For the Council's reference, Mr. Gatewood will be reporting environmental issues for the previous month; this report is for the month of September. The facility had the following number of exceedances on Outfall 001-Process Wastewater in September:

- Eight pH exceedances: This is a continuously monitored parameter. The facility has attempted to operate the cooling tower chemical injection system (sulfuric acid for neutralization) as designed, but the system could not consistently maintain limits. GHE is upgrading the control system and installing increased capacity acid pumps.
- Six - chloride exceedances: This parameter is monitored on a weekly basis. The process cycles the chloride up. The raw water has a higher level than anticipated and the permit limit is lower than the predicted level. The facility will be performing raw water testing as a requirement of the recently revised permit.
- Five - Iron exceedances: This parameter is sampled at the discharge of the oil water separator. The oil water separator collects wastewater from all floor drains and the exceedances are due to corrosion in the underground collection piping.

Mr. Gatewood said to date the plant has generated approximately 779,883 MWh. The unit operated for 29 days in September for 350,172 MWh resulting in a 78% capacity factor for the month.

The site continues to receive noise complaints when the facility is operating. The complaints are in the form of a weekly phone call from a nearby neighbor.

Mr. Jim LaSpina conducted a compliance inspection at the facility on September 23, 2008. He was accompanied on the inspection by the Plant Engineer Mr. Kevin Warner. All the records and plans required by the SCA were readily available for inspection and appeared to be in order. Project staff has recently updated most of the plans to reflect the final configuration and operational procedures of the newly-built facility. Initial Operations have highlighted two main areas of concern:

1. National Pollutant Discharge Elimination System (NPDES) exceedances:
 - a. In July 2008, the facility exceeded its chloride effluent limit once.
 - b. In August 2008, the facility exceeded its chloride effluent limit once, its iron effluent limit 3 times, and its pH limit eight times.
 - c. See above for September 2008 exceedances.

Mr. LaSpina noted that the Satsop CT Project is experiencing problems typical of a new facility. Mr. Warner explained that the chloride exceedances were caused by the unstable cooling tower chemistry, and as the operators gain experience the chloride levels are diminishing. The pH exceedances are caused by an inadequate pH neutralization system. At this time, GHE is replacing the entire system.

2. Noise Complaints:

EFSEC staff continues to receive complaints of excess noise from the Project. At this time the complaints are coming from one nearby family. However, due to the lack of a continuous sound monitoring system, EFSEC staff is unable to conclusively demonstrate whether the Project is in compliance with state noise standards in Chapter 173-60 Washington Administrative Code.

Mr. LaSpina reported that there was a NOx excursion due to an extreme Western Electricity Coordinating Council (WECC) testing requirement. EFSEC's compliance contractor, the Olympic Region Clean Air Agency determined the exceedances did not constitute a violation of the permit.

Mr. LaSpina said that due to the number of NPDES exceedances staff will recommend the Council issue a Notice of Incident, which is the lowest level of enforcement at the November EFSEC meeting.

Referring to the noise issue, Mr. LaSpina recommended that the Satsop CT Project be required to implement a comprehensive noise monitoring program, including a continuous noise monitoring system. He suggested that at least one continuous noise monitor should be placed at an appropriate site on the property boundary, and another at one or more nearby neighbor's residences(s) (if agreed to by the property owner(s), to be determined by the certificate holder's consultants in consultation with EFSEC staff.

Ms. Karen McGaffey, representing Grays Harbor Energy, said the company has recently conducted a noise study that will give the Council additional data for a better informed decision on the issues involved with the noise complaints. She requested that the Council delay any decision on the continuous noise monitoring until the completion of a report, which is expected in November 2008.

In response to Ms. McGaffey's request, the Council asked Grays Harbor Energy to bring back the report from the recent noise testing and a cost determination for a continuous monitoring system. The Council also asked staff to determine the number of complaints that have been received at the other agencies to see what the extent of the noise problem may be prior to determining whether a continuous noise monitoring program is required.

Chehalis Generation Facility

<i>Project Update</i>	<i>Rob Smith, Chehalis Power</i>
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Mr. Rob Smith reported that Chehalis Power has been operating for more than 2,185 days without a Lost Time Accident. Chehalis Power maintains an effective safety program through a behavioral-based approach. The program has been strengthened through individual safety declarations and specific safety targets tied to bonuses.

There have been no stormwater exceedances in the past year, and the site remains in excellent shape. There are currently two vacancies for operators and the plant maintains a current staff of 18 personnel.

The plant dispatch for September was approximately 90%. Public concern regarding the plant noise has greatly diminished in the past two years and Chehalis Power has had no complaints with noise in over a year. Facility staff continues to conduct routine daily noise tests on-site and weekly off-site noise tests, per Chehalis Power's agreement with EFSEC.

On September 17, 2008, Mr. LaSpina conducted a compliance inspection of the Chehalis Generation Facility. Mr. LaSpina was accompanied by Bob Ross, Plant Operator-Technician responsible for environmental reporting. All records and plans required by the SCA were readily available for inspection and appeared to be in order. The plant has recently been purchased by PacifiCorp and all plans and procedures are undergoing review and revision, as necessary. The facility has been operating for five years and has an excellent record of compliance. During the third quarter of 2008, the facility exceeded its Title V Air Operating Permit NOx limit twice. One exceedance was attributed to an operating equipment malfunction and the other to an emissions monitoring system malfunction. EFSEC's compliance contractor, the Southwest Clean Air Agency, determined they did not qualify as permit violations and were not actionable.

CO₂	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Allen Fiksdal, EFSEC Manager, reported to the Council that he had a discussion with PacifiCorp regarding the preparation of the Request for Proposal (RFP) for the CO₂ mitigation. PacifiCorp will be performing the ground work for the RFP and presenting the Council with a short list of qualified proponents to perform the mitigation. Mr. Fiksdal stated that the implementation of the process probably wouldn't start until after the end of the year.

6. OTHER

Council member Jeff Tayer noted he has been working with the Oregon EFSC and a group of stakeholders with the U.S. Department of Fish and Wildlife on a reference document for the siting of wind projects. Mr. Tayer asked the Council members and staff to review at the document. Chair Luce noted that he has forwarded a document produced by the state of Minnesota on the siting of wind farms. He requested staff forward these documents to Council.

RULE MAKING

<i>Electrical Transmission Facilities</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported that, as a result of the comments from the public comment period for the CR-102 for Chapter 463-61 WAC, there are a few changes to the rules as proposed. The Council reviewed the changes as proposed by Mr. Fiksdal. After reviewing the changes the Council reviewed the response to comments in the concise explanatory statement prepared by Mr. Fiksdal and adopted the rules as proposed with the non-substantive clerical changes. Mr. Fiksdal was directed to submit a CR-103 (Order of Adoption) to the Code Reviser's Office as soon as practicable. Mr. Fiksdal noted that the rules would be effective 31 days following submittal of the CR-103.

<i>Chapters 463-10, 43, 58, 60, & 62</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal presented the Council with a series of suggested rule changes and needed citation corrections. He asked the Council for input to the suggested changes. Council members suggested that his proposed changes be submitted to the Code Reviser's Order Typing Service so the members can better review them.

<i>PSD/Expedited Rule Making</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reminded the Council that a CR-105 was issued for expedited rule making to update Chapter 463-78 WAC to adopt by reference the Department of Ecology's latest air rules to gain full delegation from EPA for issuing PSD permits. The CR-105 was issued in September starting a 45 day comment period. The comment period ends November 19, 2008. Mr. Fiksdal hopes to bring this rule to the December meeting for adoption.

<i>Independent Qualified Organizations</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Chapter 80.70 RCW requires the Council develop a list of Independent Qualified Organizations to receive funds for CO₂ mitigation. This list would enable a certificate holder to choose from the list a company or organization they could receive funds for their required CO₂ mitigation. Mr. Fiksdal noted he would like to send out a request for qualifications and would be asking the Council to approve issuance of a Request for Qualifications at its November meeting.

Recess

The Council recessed the meeting at 2:35 p.m. to await the arrival of Mr. David Bricklin prior to starting the Wild Horse conservation easement agenda item.

The Council reconvened at 3:05 p.m., to hear discussion on the Wild Horse Wind Power Project Conservation Easement.

5. PROJECT UPDATES (CONTINUED)

Wild Horse Wind Power Project

<i>Conservation Easement</i>	<i>Jeff Tayer, WDFW Scott Williams, PSE David Bricklin, Bricklin Newman & Dold</i>
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The Council reconvened at 3:05 pm. Council member Jeff Tayer, Department of Fish and Wildlife (WDFW), updated the Council on the Wild Horse conservation easement that was briefly discussed at the Council's last meeting. Mr. Tayer and Mr. Williams of PSE have been working closely together on resolving the issues surrounding the easement. The process began when the project was permitted. WDFW and PSE have been negotiating the terms of the easement since then. During the discussions, WDFW and PSE sought to balance the needs of the utility to produce green power with WDFW's need to conserve shrub-steppe habitat. A conservation easement by definition is shared ownership of a piece of property by two organizations that may not, and in this case do not, have the same mission. In the end there was a compromise. PSE agreed to limit all development not necessary for operation of the wind farm on 75% of their ownership of property at Wild Horse site. WDFW agreed to not extinguish, through the easement, PSE's ability to apply for a permit for developing two specific types of alternative energy, solar and geothermal, on 25% of the property. The 25% where solar and geothermal energy could be developed is limited to the southern part of the wind farm. Much of this land was acquired after the WDFW settlement agreement with PSE and is not subject to the terms of the agreement.

PSE added two parcels to their ownership after the settlement agreement was completed during EFSEC's siting process and those are not subject to the terms of the agreement, however PSE has since offered to include them. One is the area on the south end of the wind farm; the other is the expansion area to the north. In Kittitas County most of the harm currently being done to habitat is from types of development that would be prohibited by the easement. Solar/geothermal impacts may or may not occur but the habitat on the southern part of the project will be more protected with the easement. The easement on the northern parcel has no exception to allow solar/geothermal development.

Almost all the lands originally offered as easement property will have an easement that has no solar/geothermal exception. Almost 100 percent of PSE lands at Wild Horse will have a conservation easement including over 2,000 acres of land that was not originally promised by PSE for the easement. Seventy-five percent of the property covered by the easement will have allowed uses of wind power, grazing, recreation, solar and geothermal power production. The habitat within the easement will be more protected with the easement than it is without it. WDFW is asking the Council to clarify the relationship, if any, between the conservation easement and the Site Certification Agreement (SCA); and the Department is asking EFSEC to identify what future interactions the Council might have with the easement. Mr. Tayer said the WDFW staff intends to take the conservation easement forward to the November Fish and Wildlife Commission meeting for acceptance.

Council member Tayer said that several questions have been raised regarding the sufficiency of the conservation easement. He outlined the following questions with answers:

1. How are water resources protected?

The easement is most protective on the eastern part of the property where almost all the water resources such as creeks and springs occur.

2. Are WDNR lands included in the easement?

No. An easement is a property right that an individual or company must own before it can be granted. PSE does not have the authority to grant what they do not own. It was not an expectation that PSE would grant development rights on state property. (I don't know that development rights is the correct term here. I believe he was referring to the conservation easement. It might be best to delete the last sentence. Check with Jeff.)

3. Is mining prohibited by the easement?

PSE does not own or control the mineral rights on their property; therefore they cannot grant the mineral rights to WDFW. PSE did agree to share with WDFW their ability, as fee owner, to require impact avoidance and mitigation in the event that minerals are actually extracted.

4. Would the easement allow PSE to develop alternative energy at Wild Horse?

Yes. The easement discussions began with PSE asking for a reservation of all alternative energy development anywhere on the property and ended with only solar and geothermal development on the southern most part of the property. The southern area is the least productive for wildlife and the closest to existing infrastructure. It's also away from most water resources and away from the core of the Quilomene and Whiskey Dick Wildlife Areas. The fact that the easement does not prohibit solar or geothermal development is not the same as having those activities permitted. Prior to development of solar or geothermal projects at Wild Horse, PSE would need to obtain permits with substantial environmental review and mitigation requirements.

5. Are there other factors the Council should consider?

Conservation actions should be considered cumulatively rather than piecemeal. This is the fundamental principle of cumulative impacts analysis required by SEPA, and it works as well when considering cumulative conservation benefits. PSE was instrumental in delivering an enforceable option to purchase and protect over 17,000 acres of key shrub-steppe habitat known as the Skookumchuck Ranch. They also facilitated and participated in the Wild Horse Coordinated Resource Management (CRM) process to help achieve a wildlife friendly, science based grazing program. PSE agreed to include expansion lands into the conservation easement, though they were not obligated to do so. PSE agreed to remove four turbines, which would have been adjacent to the Wildlife Area, from their expansion plans. Removal of those turbines also eliminated the need for an overhead power line, which had raised concerns about potential impacts to birds, including raptors and sage grouse. Finally, PSE agreed that if their in-holding to the Wildlife Area was ever to be sold, it would be sold to WDFW.

Mr. Tim McMahon - Stoel Rives, representing PSE, stated that the conservation easement is a success. The conservation easement is demonstrative evidence of a lot of hard work, it is a voluntary offer and to suggest it is mandatory is not supported by any documentation from the adjudication process.

Mr. Scott Williams - PSE, offered the Council some history on how the easement was created. As background he noted the Wild Horse site totals 8,600 acres, 63% (5,340 acres) PSE owns, 29% (2,500 acres) is leased from Department of Natural Resources (WDNR), and 8% (640) is leased from WDFW. In February 2005, PSE and Horizon sent letters to Jeff Tayer in which the commitment to place a voluntary conservation easement "on the private lands within the project site" was made. In that letter, the private lands are clearly defined as

the land that PSE or Horizon would purchase in fee for construction of the project (5,340 acres). Mr. Williams said the letter clearly shows that PSE's intent was never to encumber the WDNR or WDFW property that is within the project site, as permitted by EFSEC. Moreover, PSE does not have authority to encumber the WDNR or the WDFW property within the project site. Therefore, as currently proposed the conservation easement would ultimately encompass approximately 7,500 acres, or 2,160 acres more than originally proposed.

Mr. Williams said that as far as the mitigation parcel is concerned, the Site Certification Agreement reads: "Habitat Mitigation Parcel: The Certificate Holder shall protect an approximately 600 acre Mitigation Parcel to mitigate for all permanent and temporary impacts to habitat caused by the Project. The Mitigation Parcel meets the requirements for ratios outlined in the WDFW Wind Power Guidelines (2003). The area designated for mitigation includes all of Section 27, T18N, R21E in Kittitas County, WA, with the exception of that area which is being developed for the Project (Turbine String L). The Certificate Holder shall ensure that no other development takes place on the parcel by protecting and retaining the Mitigation Parcel for the life of the Project. The Parcel shall be fenced to exclude livestock grazing, if grazing practices continue on adjacent properties at the time the Project begins Operation." Mr. Williams said the CRM came up with a plan for temporary fencing to protect section 27 as required by the SCA. The plan was presented to the Technical Advisory Committee (TAC) for approval. The TAC approved the temporary fencing for this season of grazing. PSE has merely requested more flexibility through the CRM and TAC to advise PSE on how best to deal with Section 27. If permanent fencing is the easiest and best way to deal with Section 27 then it will be fenced, but if there is a better way to deal with the livestock grazing and protect the wildlife by using temporary fencing PSE would like the opportunity to do so.

Mr. McMahan addressed Mr. Kruse's concerns from his October 9, 2008 letter to the Council. By noting the following:

1. Change the geographic scope of protections for the project from 100% of the area to 60% of the area? Addressed by Mr. Williams explanation on the land size.
2. Waive requirements for permanent fencing protection of the Mitigation Parcel? PSE did not request a waiver but there was a proposal on how to deal with fencing that has been addressed by the CRM and the TAC.
3. Waive requirements for permanent fencing protection of the Springs? There has not been a proposal to remove the permanent fencing; this matter has been addressed in the CRM and by the TAC.
4. Perfect a legal interpretation of the term "voluntary" in an effort to dilute requirements for protections? There is nothing in the record to support this conservation easement being anything other than voluntary.
5. Change the "Wind Energy" facility to an "Alternative Energy" facility and develop solar, mining, drilling, oil and gas production. Alter and expand existing road systems? Any further expansion of renewable energy would have to come through the Council in the form of an amendment to the Site Certification Agreement. The easement only addresses mineral issues as they are not under control of any party to the easement.
6. Suspend grazing on the project site? PSE is not proposing to suspend the grazing on the project site.

Council member Wilson asked Mr. McMahan to clarify the difference between this easement being voluntary versus required. She noted that in her review of the documents the recommendation for approval to the Governor was considered because of the stipulated agreement between Wildlife and Horizon. In the agreement, it stated there is a voluntary easement. She asked if that made it a legal requirement.

Mr. McMahan stated that the agreement states in two places what was understood between the two parties. He noted the agreement states "... WDFW notes that the Applicant (separate from this agreement) has already voluntarily committed to enter into a conservation easement regarding the project site, not as mitigation but as a voluntary act of good citizenship and stewardship of the land. This conservation easement shall be consistent with the uses of the land required by a wind power generation facility, and allow the land to be used for wind energy development and associated activities and facilities, pursuant to the commitments and conditions set forth in the stipulations, the EFSEC Application for Site Certification and the EFSEC Site Certification." He said the language is designed to say that Horizon and now PSE are volunteering to do this.

Council member Wilson also asked if the Wildlife Commission chooses for what ever reason to turn down this easement is PSE's commitment then fulfilled and nothing further is required of PSE? Mr. McMahan assured the Council that in the event the Commission turned the easement down, which is highly unlikely, that PSE was sure they could pursue several other organizations that would like to enter into this type of easement. The commitment doesn't stop in the event the commission were to refuse the easement. PSE is committed to doing something positive for the environment and would work with the commission to iron out any issues WDFW may have with the easement.

Mr. Dave Bricklin representing Friends of Wildlife and Wind Power (FWWP) addressed the Council. He said the group of people that make up the Friends of Wildlife and Wind Power care about both the wildlife and wind power. He noted that FWWP appreciates the Department of Fish and Wildlife for allowing FWWP to participate in the conservation easement process and believe this project to be a huge success for wildlife. He said there is some concern over the follow through on all the commitments. If the applicant comes to the Council and proposes voluntary actions and the decision to site the project is based upon the way the applicant proposed the project, for the applicant to then remove the voluntary actions, doesn't that then change the proposed project. Wouldn't the Council have written the order differently if the applicant hadn't proposed those voluntary measures. If the proposed project didn't have those various components, then the Council would have had the obligation to consider, what will the wildlife impacts be, and to what extent do we need to impose mitigation. If these measures that were proposed aren't included because they were proposed voluntarily then the project is no longer viable as proposed.

Mr. Bricklin addressed the size of the conservation easement. He said that at the time that PSE signed leases for the WDFW and DNR land, surely it obtained the authority to enter into an easement. When the project's impacts were evaluated, the Council had to decide what mitigations were going to be imposed, and the Council considered that there would be a conservation easement on the entire parcel. If there are legal restrictions that keep the DNR lands from being a part of that easement then there is a quantum of mitigation that is missing. He noted that 3,000 plus acres of land doesn't have a conservation easement, so what do you do to make up for that. He said the conservation easement doesn't address solar or geothermal and allows for mining, again the Council was informed there would be a conservation easement that allowed wind power on this site and prohibited all other activities. If it turns out the conservation easement isn't going to be that protective, that it is going to allow for other uses, whether because there is change in the state policy or there turns out to be prior lease or reserved rights. Mr. Bricklin believed the Council thought it was apparent that if the project mitigation wasn't in the conservation easement, then it needs to come from some other source.

Mr. Bricklin noted that the mitigation parcel consisting of an entire section of land (640 acres) needed to be fenced for two reasons. One to protect the land from livestock grazing; and second, it was very important, from a scientific and wildlife management point of view because it will provide a test parcel. It would allow grazing on some land and with the parcel

right next to it being a protected area, data could be collected to determine what extent grazing impacts wildlife management. Fencing would result in both a direct protective benefit and an indirect scientific benefit. He said the science has actually changed since the implementation of the SCA; according to WDFW, and fencing is not the best thing for wildlife. If there isn't going to be the benefit from the fencing as originally thought, where will the benefit come from? What other piece of mitigation will be presented to replace the benefit that the fencing was to provide?

Mr. Robert Kruse, Friends of Wildlife and Wind Power, said that protection for the mitigation parcel for the life of the project is part of the SCA and that needed to be part of the conservation easement or any other legal instrument providing protection for the life of the project.

Mr. Kruse also said that fencing of the Springs should be treated just like the mitigation parcel. He noted the SCA requires that the Springs be fenced. He felt that clearly the intent of the SCA at the time of adoption was to fence the Springs to allow vegetative cover to be restored. He also noted the new science indicated that fencing isn't necessarily the best thing to do; however, some experts still agree that wildlife friendly fencing (which is barbless and constructed in a way that fawns can get underneath and wildlife can go over the top) is still the best option, but he said temporary electric fencing is the most favored technique. Mr. Kruse noted that there is no reference in the conservation easement to the type of fencing that will be placed at the Springs or the mitigation parcel. He said the FWWP has a concern that the Springs or mitigation parcel will not be protected as proposed in the Application for Site Certification.

Mr. Kruse presented to the Council a handout summarizing the conclusions from the October 9, 2008 letter from FWWP

Mr. Kruse reiterated the summaries from the October 9, 2008 letter. Mr. Kruse requested that FWWP be allowed to review and comment on the most recent draft of the conservation easement. Chair Luce stated that the Council will be having a discussion on the authority the Council has over the easement if any.

Chair Luce asked what was FWWP's understanding of the statement from the February 7, 2005 letter from Roger Garratt representing PSE to Jeff Tayer of WDFW that "PSE will grant a conservation easement, as discussed above, on the private lands within the project site." Chair Luce noted that the "private lands" referenced are those that are owned by private parties, not WDFW lands or WDNR lands.

Mr. Kruse replied that in May of 2006 the Site Certification Agreement stated that the conservation easement would be on the entire site. He said EFSEC responded to 33 commenter's that the conservation easement would be on the "entire project". He wondered how the Council can go back to an older document as the defining criteria to mandate the parameters of the conservation easement, when the SCA is the legal binding document that covers the entire project site.

Chair Luce asked which specific SCA language stated that the conservation easement will include WDNR lands and WDFW lands. Mr. Bricklin stated in Council Order No. 814 page 15 the Council says "The Council also acknowledges the Applicant's commitment to voluntarily place the entire 8,600 acre Project area into a conservation easement with a local land conservancy organization." Chair Luce responded that the language is from a Council order not from the SCA as stated by FWWP. Chair Luce noted that he thought that FWWP's settlement agreement was for efforts beyond what was being proposed by the applicant at the time, it does not address the specifics of the conservation easement. He also noted that the settlement agreement did not address things that were already included in the project and that the settlement agreement was entered into prior to the Council's decision on this project but after the February 7, 2005 letter addressing the conservation easement for PSE.

Mr. Bricklin noted that the Final Environmental Impact Statement response to repeated comments was that the commenter didn't need to be concerned because there would be a conservation easement.

Council member Wilson commented that she felt that there are two points of discussion that are being blended together. There is the conservation easement which is an agreement between PSE and WDFW. The other is the mitigation parcel and the Springs being fenced. Both are important but separate and not interchangeable.

Chair Luce stated that the question before the Council is in reference to the conservation easement. He determined the questions about the conservation easement are: 1. is it voluntary, and 2. is it a condition of the SCA and if it's not, what does the Council have to say about an agreement that has been negotiated between WDFW and PSE that is going to go before the Fish and Wildlife Commission in November.

Council member Tayer informed the Council that the Fish and Wildlife Commission is going to be looking for something on the record from the Council about what role or expectation it has or does not have in terms of the easement and the SCA. Is there a regulatory overlay or not?

Council member Wilson questioned whether or not the Council is the legal authority to decide what is voluntary and what is not. The language around the recommendation was because the two parties (PSE and WDFW) agreed in a settlement agreement, to do this voluntary easement. That was one of the reasons the Council recommended approval.

Council member Byers stated that he had a question about the PSE September 18, 2008 letter. He noted that on the final page of Mr. McMahan's letter last paragraph, the first statement reads like a finding of fact. Is it indeed a finding of fact from the Council Order No. 814. "The Council finds that with the mitigation measures proposed by the Applicant, and required in the Site Certification Agreement, mitigation is consistent with the WDFW Wind Power Guidelines, and as a result no significant adverse impacts to habitat are expected to occur." Council member Byers said that the way he read that statement is that the mitigation measures that are required to achieve a no adverse impact are those required in the Site Certification Agreement. Which leads to the question: what is required in the Site Certification Agreement and what are specific identification of the mitigation measures?

Chair Luce stated that from his perspective the conservation easement as laid out in Mr. Garratt's February 7, 2005 letter is voluntary and the easement pertains only to private land, those private lands over which the party offering easement has control.

Chair Luce expressed his belief that the Council does not have any authority over the easement, so it can't find any inconsistency with the Site Certification Agreement, because there isn't anything in the SCA that requires the easement. Chair Luce proposed the Council recommend to the Fish and Wildlife Commission, that the Commission consider acceptance of the conservation easement negotiated between WDFW and PSE as consistent with the offer by PSE in its February 7, 2005 letter to the Department of Fish and Wildlife.

Council member Wilson stated that the real question before the Commission involves the Council's authority. The letter to the Commission should be drafted to say that we have seen it, we appreciate that you have shared the agreement with us but, the issue that Mr. Kyle Crews, AAG, is going to have to assist in deciding is: Does the Council have some review responsibility and approval authority? If we have none, then we let the Commission know that we have reviewed it, thank you, but the Council doesn't have any responsibility to say yes or no about the easement.

Mr. Tayer anticipates that the Commission is going to get a question that says this isn't consistent with the Site Certification Agreement, and PSE is not living up to the permit requirements. The Commission is going to want to know is that true or isn't it true. Chair Luce was confident that language can be found to convey the sense of the Council but not

go so far as to say that the conservation easement is part of the SCA or a condition of the SCA.

Mr. Tayer stated that he believes that the entire project is significantly more protected with the easement than it would be without. There is an extensive section in the easement about grazing; and the mitigation parcel is all about cattle management. The easement does nothing but beef up the intended protections that were inherited on the mitigation parcel. Chair Luce suggested language that the Council has heard the presentation of the WDFW member and that the Council concurs with Mr. Tayer's conclusion that the easement benefits fish and wildlife, particularly wildlife. While the Council does not believe it has authority over the conservation easement, as it was offered voluntarily, we do concur with Mr. Tayer's observation. Chair Luce believes it the easement would be beneficial to the Commission.

Mr. Kruse asked if there would be any changes to the permanent fencing required by the SCA. Ms. Wilson stated that the requirement will be addressed as part of the amendment to the SCA presented by PSE for the additional turbines. This question was raised along with several others at the public meeting held in Ellensburg. Changing the fencing of the mitigation parcel is still part of that review.

Mr. Tayer stated that easement does address cattle grazing, that the mitigation parcel is all about the grazing management. He stated that the language of the easement is very good and strong about cattle grazing. He added that the easement is adaptive in nature and would like to have the Council and FWWP to take a look at that language.

Ms. Wilson said that she doesn't understand the comment of DNR's intentions in the handout presented by Mr. Kruse. The handout states, "DNR has declined to place protections on their land. These lands would be allowed to become fully developed under the current easement draft." Ms. Wilson pointed out that any further development would still need to come through the Council as a part of an amendment process. There would be no development allowed unless it goes through the EFSEC process for amending the use of the lands.

Mr. Tayer stated that in the event that we get to a closing on this easement, those parcels then become in-holding to the conservation easement and to the commitment that we have made collectively to protect the conservation values there. So the potential of developing internal to this conservation easement takes on a different nature.

Mr. Fiksdal stated that there needs to be a SEPA determination on the amendment request. Mr. Fiksdal, as the SEPA official, had determined that a mitigated DNS would be appropriate for this project, but he has accepted the certificate holder's proposal that a Supplemental Environmental Impact Statement (SEIS) be prepared. However the certificate holder has proposed that there should be a Supplemental Environmental Impact Statement (SEIS). Mr. Fiksdal noted that once a draft SEIS is prepared it will go out for a comment period of 30 days. Then the Council can make its decision based upon the SEIS and all the public comments. Barring any objection that is the direction staff will go, having the SEIS available at the November Council meeting. There were no objections.

7. ADJOURN

The meeting was adjourned at 4:55 pm.