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**ENERGY FACILITY SITE EVALUATION COUNCIL  
STATE OF WASHINGTON**

IN THE MATTER OF APPLICATION  
NO. 96-1

OLYMPIC PIPE LINE COMPANY

CROSS CASCADE PIPE LINE  
PROJECT

APPLICATION NO. 96-1

DEPARTMENT OF NATURAL  
RESOURCES' OPENING  
STATEMENT

**I. INTRODUCTION**

The Department of Natural Resources (Department or DNR) submits this opening statement to the Energy Facility Site Evaluation Council (EFSEC or Council) to provide general guidance to the Council on DNR's testimony in Phase I of this proceeding. This opening statement does not address DNR's state land management function that is the subject of Phase II of this proceeding.

The Department's mandate includes the regulation of activities on forest land pursuant to the Forest Practices Act, RCW 76.09, and the state's forest fire statutes, RCW 76.04. In addition, the Department serves as an information agency on select issues related to geology. The Department's Phase I testimony, presented by ten (10) witnesses, focuses on the three subjects identified above: geology, forest practices, and forest fires. The intent of DNR's testimony is to identify for EFSEC state law and regulations related to forest practices, forest fires, and geology, to explain how DNR regulates activities governed by these laws, and to analyze the Cross Cascades Pipeline Project (Pipeline or Project) under these laws and regulations. This opening statement will present a roadmap to these statutes and regulations, as well as to DNR's testimony.

An outline of these laws and regulations is contained in the table below. An overview of these laws and DNR’s testimony follows the table.

TOPIC	SUBTOPIC	STATUTES	REGULATIONS/PRESCRIPTIONS
<b>Geology</b>	Minerals	RCW 36.70A	WAC 365-190-070
	Earthquakes		
<b>Forest Practices</b>		RCW 76.09	WAC 222 Forest Practices Board Manual
	Watershed Analysis		WAC 222-22 Forest Practices Board Watershed Analysis Manual Tolt Watershed Analysis Report Griffen/Tokul Watershed Analysis Report Keechelus/Mosquito Creek Watershed Analysis Draft Report Keechelus Causal Mechanism Report Mosquito Creek Causal Mechanism Report Cabin Creek Watershed Analysis Draft Report Big Creek Watershed Analysis Draft Report
	Stream Crossings		WAC 222-30 Forest Practices Board Manual, Section 1
	Roads		WAC 222-24
	Harvest; Reforestation		WAC 222-30 WAC 222-34
<b>Forest Fires</b>		RCW 76.04	WAC 332-24

## II. OVERVIEW

### A. Geology

The geologic issues raised by the Project are primarily local land use issues. However, DNR, in its role as state surveyor and state geologist, provides testimony to alert EFSEC to these issues. While DNR has no regulatory oversight authority regarding these issues, DNR’s expertise can provide guidance to EFSEC.

#### 1. Minerals

The Growth Management Act, RCW 36.70A, is the primary statute of interest regarding minerals. Under the Act, the legislature directed counties to adopt regulations to “assure the conservation of . . . mineral resource lands . . .” RCW 36.70A.060(1). In addition, counties are

1 to designate “mineral resource lands that are not already characterized by urban growth and that  
2 have long-term significance for the extraction of minerals.” RCW 36.70A.170(1)(c). “Minerals”  
3 are defined to “include gravel, sand, and other valuable metallic substances,” while “mineral  
4 resource lands” are defined as “lands primarily devoted to the extraction of minerals or that have  
5 known or potential long-term commercial significance for extraction of minerals. RCW  
6 36.70A.030(11); WAC 365-190-030(12), (14). Implementing regulations promulgated by the  
7 Department of Community, Trade and Economic Development regarding mineral resource lands  
8 are found at WAC 365-190-070.

9 As stated above, DNR does not have specific regulatory authority over the mineral issues  
10 raised by Olympic’s proposed activities. The Department’s testimony on this subject is intended  
11 to make one point: in its deliberations on whether to recommend certification of this Project,  
12 EFSEC should be aware that the Project raises the issue of crossing mineral resource lands which  
13 would preclude the future development of minerals by the installation of the Pipeline.

14 Testimony of Raymond Lasmanis, Exhibit No. 86. The policy of the state regarding use of  
15 mineral resource lands for uses other than mineral extraction is contained in the Growth  
16 Management Act, RCW 36.70A, and its implementing regulations, WAC 365-190. As stated  
17 above, conservation of mineral resource lands and assuring a future supply of mineral material  
18 are to guide land use planning by the counties. RCW 36.70A.060(1); WAC 365-190-070.

19 DNR is a source of information and expertise on mineral issues raised by the Project and  
20 DNR invites the Council to make use of DNR’s expertise and information and map base as it  
21 considers the impacts of the Project on the future supply of mineral resources. See WAC 365-  
22 190-170 (counties directed to consider maps and other information on location and extent of  
23 mineral deposits provided by DNR; counties encouraged to use DNR’s detailed mineral  
24 classification system).

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1 **2. Earthquakes**

2 The Department's testimony on potential earthquake hazards is designed to alert EFSEC  
3 to one issue: information in current literature on the location of one fault and the proper  
4 potential magnitude for another fault which was not considered by Olympic in its application or  
5 direct testimony. Testimony of Timothy J. Walsh, Exhibit No. 87. As the location and  
6 magnitude of faults impacts the potential for the Pipeline to be affected by an earthquake, the  
7 Department felt it was prudent to alert EFSEC to the literature that was not cited in Olympic's  
8 application.

9 **B. Forest Practices**

10 In general, forest practices are governed by RCW 76.09 and WAC 222. The Department  
11 provides the above table with references to specific sections to assist EFSEC in locating pertinent  
12 statutes and regulations related to specific forest practices issues during its deliberations on the  
13 Project. However, the general applicability of the statutes and regulations should not be  
14 dismissed by reference to particular sections. Forest Practices Board Manuals and Watershed  
15 Analysis Reports listed in the table above are part of the law applicable to forest practices in the  
16 same vein as RCWs and WACs. The Department did not attach copies of these Manuals and  
17 Reports to its testimony due to the volume of paper involved. However, as these Manuals and  
18 Reports are integral to the analysis of forest practices issues raised by the Project, it is  
19 appropriate for EFSEC to consult these documents during the deliberative process. While  
20 DNR's testimony on forest practices provides general guidance on the application of watershed  
21 analysis to the Project, the testimony cannot substitute for consultation with the documents in  
22 relation to the certification application. The Department is willing to work with EFSEC to  
23 determine options for EFSEC consultation of these documents.

24 **1. Policy and Purpose of the Forest Practices Act and Regulations**

25 Activities on forest land are governed by the Forest Practices Act, RCW 76.09, and  
26 regulations promulgated by the Forest Practices Board, WAC 222, which are enforced by DNR.

1 In promulgating the Forest Practices Act, the legislature set out the policy of the state and its  
2 findings of the public interest in regulating activities on forest land:

3 (1) The legislature hereby finds and declares that the forest land resources  
4 are among the most valuable of all resources in the state; that a viable forest  
5 products industry is of prime importance to the state's economy; that it is in the  
6 public interest for public and private commercial forest lands to be managed  
7 consistent with sound policies of natural resource protection; that coincident with  
8 maintenance of a viable forest products industry, it is important to afford  
9 protection to forest soils, fisheries, wildlife, water quantity and quality, air quality,  
10 recreation, and scenic beauty.

11 (2) The legislature further finds and declares it to be in the public interest  
12 of this state to create and maintain through the adoption of this chapter a  
13 comprehensive state-wide system of laws and forest practices regulations which  
14 will achieve the following purposes and policies:

15 (a) Afford protection to, promote, foster and encourage timber growth,  
16 and require such minimum reforestation of commercial tree species on forest  
17 lands as will reasonably utilize the timber growing capacity of the soil following  
18 current timber harvest;

19 (b) Afford protection to forest soils and public resources by utilizing all  
20 reasonable methods of technology in conducting forest practices;

21 (c) Recognize both the public and private interest in the profitable  
22 growing and harvesting of timber;

23 (d) Promote efficiency by permitting maximum operating freedom  
24 consistent with the other purposes and policies stated herein;

25 (e) Provide for regulation of forest practices so as to avoid unnecessary  
26 duplication in such regulation;

(f) Provide for interagency input and intergovernmental and tribal  
coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and  
state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts  
contained in local comprehensive plans and zoning regulations; and

(i) Foster cooperation among managers of public resources, forest  
landowners, Indian tribes and the citizens of the state.

(3) The legislature further finds and declares that it is also in the public  
interest of the state to encourage forest landowners to undertake corrective and  
remedial action to reduce the impact of mass earth movements and fluvial  
processes.

1 RCW 76.09.010 (emphasis added). Additionally,

2 The legislature hereby finds and declares that riparian ecosystems on  
3 forest lands in addition to containing valuable timber resources, provide benefits  
4 for wildlife, fish, and water quality. The legislature further finds and declares that  
5 leaving upland areas unharvested for wildlife and leaving snags and green trees  
6 for future snag recruitment provides benefits for wildlife. Forest landowners may  
be required to leave trees standing in riparian and upland areas to benefit public  
resources. It is recognized that these trees may blow down or fall into streams  
and that organic debris may be allowed to remain in streams. This is beneficial to  
riparian dependent and other wildlife species.

7 RCW 76.09.330.

8 Forest practices are any

9 activit[ies] conducted on or directly pertaining to forest land and relating to  
10 growing, harvesting, or processing timber, including but not limited to:

- 11 (a) Road and trail construction;
- 12 (b) Harvesting, final and intermediate;
- 13 (c) Precommercial thinning;
- 14 (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

15 RCW 76.09.020(8).

16 As proposed, the Project appears to contemplate at least the following forest practice  
17 activities: right-of-way and road use and construction, harvesting of timber, reforestation and  
18 brush control. See Testimony of Lanny Quackenbush, Exhibit No. 75, at 5 (additional detail is  
19 necessary to determine the precise forest practice activities and locations contemplated by the  
20 Project). Additional forest practice activities may be proposed by future site specific designs and  
21 plans. The Department's testimony explains and analyzes the environmental impact issues  
22 raised by the forest practices activities proposed by the Project and guides EFSEC on the  
23 application of regulations and prescriptions to these activities to protect forest soils and public  
24 resources as that protection is contemplated by the Forest Practices Act. The testimony also  
25 alerts EFSEC to the need to analyze future site specific designs and plans submitted by Olympic  
26 (should the Project be certified) under the forest practices regulations to determine if these site

1 specific designs and plans achieve the legislative purposes and policies of the forest practices  
2 laws of the state. E.g., Quackenbush Testimony, Exhibit No. 75, at 5-6.

### 3 **2. Testimony Summary**

4 The Department provided testimony by seven (7) witnesses on forest practices issues.  
5 For the convenience of the Council, each witness is listed below with the specific issues  
6 addressed by their testimony.

7 <u>Witness</u>	<u>Issue(s)</u>	<u>Exhibit No.</u>
8 Lanny Quackenbush	Overview	75
9 Nancy Sturhan	Watershed Analysis	76
10 Susan C. Shaw	Watershed Analysis, Mass Wasting, Slope Stability; Stream Crossings; Flood Plains	77
11 Todd Bohle	Watershed Analysis, Slope Stability; Riparian Management Zones; Forest Hydrology; Roads; Stream Crossings	78
12 Ronn J. Schuttie	Roads; Sedimentation	79
13 David J. Weiss	Watershed Analysis, Mass Wasting	80
Fennelle Miller	Cultural Resources	72

14 The harvest of trees and other forest practices activities on forest land raise  
15 environmental impact issues relating to the protection of soils and the public resources of the  
16 state, thus these activities are regulated by the state in the public interest. The forest practices  
17 activities proposed by the Project are no different. The Department's testimony is provided to  
18 assist EFSEC in assessing the activities proposed by the Project and the environmental impacts  
19 of these activities in light of the policies, purposes and restrictions contained in the Forest  
20 Practices Act and associated regulations. As stated above, and as emphasized in DNR's  
21 testimony, a complete analysis of these environmental impacts is not possible without site  
22 specific designs and plans which provide more detail on the forest practices activities  
23 contemplated and how they will be carried out.

24 Although DNR's testimony provides analysis relevant to all forest land on the proposed  
25 Pipeline route, DNR focused particularly on forest practices activities in known sensitive areas,  
26

1 e.g., mass wasting sites and stream crossings, and in Watershed Analysis Units (WAUs) with  
2 completed or draft watershed analysis reports.

3 A watershed consists of all land in an area that drains into a specific water body.  
4 Watershed analysis is an assessment of a watershed that addresses the cumulative effects of  
5 forest practices activities on the public resources of the state. WAC 222-22-010(1); Testimony  
6 of Nancy Sturhan, Exhibit No. 76, at 3. See RCW 76.09.020(13) and WAC 222-16-010 (public  
7 resources defined as fish, wildlife, water and the capital improvements of the state and its  
8 political subdivisions). Rules specific to the watershed analysis process and objectives are  
9 promulgated at WAC 222-22 pursuant to the Forest Practices Act, RCW 76.09. The objective of  
10 the watershed analysis process and the resulting reports and prescriptions (including prohibitions  
11 on activities) are to “protect and restore these public resources and the productive capacity of  
12 fish habitat adversely affected by forest practices while maintaining a viable forest products  
13 industry,” and to “protect and allow the recovery of fish, water, and capital improvements . . .”  
14 WAC 222-22-010(1).

15 In her testimony, Nancy Sturhan provides an overview of the watershed analysis process,  
16 its relationship to the standard forest practices regulations and watershed analysis issues raised  
17 by the Project. Sturhan Testimony, Exhibit No. 76, at 1–6. As noted by Ms. Sturhan, the  
18 Pipeline, as proposed, crosses six (6) WAUs covered by draft or completed watershed analyses  
19 which identify areas within the WAU where standard forest practices rules are not sufficient to  
20 protect public resources from the cumulative effects of forest practices. Id., at 3, 11-21. As the  
21 legislature intended that protection of public resources be achieved through the application of  
22 watershed analysis prescriptions where they exist, it is appropriate for EFSEC to consider the  
23 analyses and prescriptions contained in the Watershed Analysis Reports identified by DNR  
24 testimony. Analysis for the other WAUs crossed by the Pipeline have not been completed and  
25 thus it is appropriate to consider standard forest practices regulations in relation to forest  
26 practices activities conducted by Olympic in these WAUs.

1 Watershed analysis identifies areas subject to specific hazards and areas with at risk  
2 resources, as well as the forest practices activities that are triggering factors. Sturhan Testimony,  
3 Exhibit No. 76, at 3-4. While generally relevant to all forest land on the Pipeline route, the  
4 testimony provided by Susan C. Shaw, Todd Bohle, and David J. Weiss identifies these sensitive  
5 areas and triggers within WAUs with completed or draft watershed analysis. Testimony of  
6 Susan C. Shaw, Exhibit No. 77; Testimony of Todd Bohle, Exhibit No. 78; Testimony of David  
7 J. Weiss, Exhibit No. 80.

### 8 C. Forest Fires

9 Pursuant to RCW 76.04, DNR is authorized to regulate activities on forest land to  
10 preserve and protect this land from forest fires. In addition, DNR is responsible for providing  
11 forest fire protection and suppression services on forest land. In his testimony, Mark Gray  
12 identifies the forest fire risks to forest land presented by the Project and state law forest fire  
13 prevention, suppression and financial responsibility requirements designed to mitigate the risk of  
14 forest fires. Testimony of Mark Gray, Exhibit No. 85. Given that the Project proposes  
15 construction and operation on forest land, the risks of forest fire from the Project, and the  
16 impacts to forest land from fire, consideration and application of the state law related to forest  
17 fires to the Project is appropriate.

## 18 III. CONCLUSION

19 The Department's testimony identifies issues and environmental impact concerns under  
20 statutes and regulations designed to preserve, protect, and maintain the natural resources of the  
21 state. The analysis provided by the Department's witnesses is based on the Pipeline route as  
22 proposed in the May 1998 map atlas and the information contained in the revised application.  
23 As noted by many of the Department's witnesses, the sufficiency of their analysis and  
24 identification of environmental impacts was hampered by insufficient site specific detail relating  
25 to the Pipeline route, construction methods, and other information normally required by DNR  
26 under the laws and regulations it implements and enforces. The Department's testimony is not

1 the conclusion to the analysis but just the beginning. Analysis of site specific designs and plans  
2 under the laws and regulations identified by DNR is also necessary to ensure that the policies,  
3 purposes, and goals of these laws are achieved should the Project be certified.

4 DATED this \_\_\_\_\_ day of April, 1999.

5 CHRISTINE O. GREGOIRE  
6 Attorney General

7  
8 MARYANNE McGOVERN, WSBA # 21976  
9 Assistant Attorney General  
10 Attorneys for Department of Natural Resources

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