CHAIR EDWARDS AND COMMITTEE MEMBERS: February 9, 2015

PUBLIC COMMENT ON SB 258

REASONS I AM OPPOSED TO THIS BILL:

Part I: Removes the requirement that amended site certificates include a review to determine if the facility meets current local ordinances, state law or rules of the Energy Facility Siting Council when an amendment is approved.

Problems with this change:

1. Site Certificates can contain multiple amendments which can delay construction start and end dates for years.
2. Often new rules are written to address problems identified during the original siting process.
3. Amendments to site certificates occur because there have been significant changes to the construction plans or timeframes.
4. There is no reason developers should be able to avoid meeting current requirements including land use rules when they ask for an amendment to a site certificate impacting turbines that have not already been constructed.
5. SB 258 removes the applicant's responsibility for showing their development continues to provide for the health, safety and the environment and places it on the public to prove there is a "significant threat" that requires incorporating new rules or statutes as part of the amendment process.
6. There is already very little protection for the public or resources when an amendment results in new impacts. The EFSC rules give them the authority to deny requests for contested case hearings on amendments. To date no contested cases have been allowed on an amended site certificate for a wind farm.

Example: The Helix Wind Development was given a site certificate to construct up to 60 wind turbines on July 31, 2009. An amendment was approved on June 24 2011 more than doubling the size of the facility to allow up to 134 wind turbines and adding 13,000 acres to the wind development. Six requests for contested cases were made covering over 14 different issues. None of the requests or issues were granted a contested case. A second amendment was approved on August 31, 2012 extending the start of construction date to August 31, 2014.

SB 258 would have exempted the developer from having to follow any laws changed between 2009 and the end of the construction which is planned to occur sometime in 2018. In addition the development would not have to be evaluated for and thus would

not have to comply with new or existing rules once the initial cite certificate was issued. Per 469.401(3) it will also exempt developers from being evaluated or required to follow changes in the rules of other state, county, city or political sub divisions. These groups are required to accept an amended site certificate and issue permits without further review. That means no required review of current rules related to such things as Removal/Fill Permits due to wetland impacts; Water Pollution Control; or Water Rights to name three.

These industrial developments should not be exempted from proper regulatory review that protects the environment and the hosting communities. Amendments need to continue requiring a complete review of current laws and regulations. Further, when amendments result in new or increased impacts to people or resources, the statute should include the right to a contested case hearing in the same manner as it would have been if the changes had been included in the original application.

Part II: Removes the requirement that energy developments be required to abide by local land use laws and regulations in effect on the date site certificate is executed. The specific language included in 469.401(1)(b) is: "Except as provided in ORS 469.504 for land use compliance, the site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate is executed. The council may require compliance with local ordinances or state law or rules of the council adopted after issuance of the site certificate if there is a clear showing of a significant threat to the public health, safety or the environment that requires application of the later-adopted ordinances, laws or rules."

Problems with this change:

1. The reason counties and cities were required by law to develop local land use laws was to provide criteria and detail specific to local resources.
2. This bill ends local control over where wind farms can be built or expanded once the initial site certificate request is made.
3. The bill removes the developer's responsibility to prove the development will not cause harm and places it on the communities to show there will be a "significant threat". This is a difficult and subjective standard to meet and no objective criteria is given. The statute should require objective measurable criteria to notify the public what standard the public will have to meet. I have no idea what a "substantial" impact would look like as I have never seen a site certificate that determined that any impacts either individually or cumulatively were "substantial". It apparently does not look like the attached map. All the facilities listed on the map which were cited by the EFSC were found to have "no significant" impact on each of the individual issues reviewed as well as in combination with all the other developments.

4. Energy developments impact more land in Oregon than any other type of industrial development. Rather than removing protections for the hosting communities and resources impacted, the legislature should be changing the terms "may" to "shall" in the statutes and require language to define "substantial" in relation to the rules that are being set aside due to a finding that there is "no substantial impact".
5. This bill does not allow local citizens to protect resources that have special value to the citizens, environment, economy or quality of life. . For example, the Brush Canyon Wind Development will cover 76,000 acres of land. It will impact areas such as the Wild and Scenic areas of the John Day River, the John Day Fossil and the historic town of Antelope. The local economy is highly dependent upon tourists and hunters. The people living in this area should be able to protect critical resources of the area through ongoing development and updating of land use rules.
6. Even with requiring compliance with state and local land use laws, there is a process in place that allows energy developments to be sited when they do not meet one or more of the land use laws. Thus, there is no reason land use laws and rules should not apply when the site certificate is approved, and any time an amendment is being processed.

General Observations:

As you consider bills such as this one which weaken or remove requirements for industrial wind developments, please keep in mind what the impacts are in combination with things such as the following:

1. By statute there can be no determination that there is a need for a wind development even though the public is paying a huge percentage of the costs of the development. This means "market forces" exert little control over the building of developments which currently exceed the capacity of the transmission lines and other infrastructure to accommodate.
2. Most of the wind energy produced in Oregon is sold out of state resulting in Oregonians being taxed to pay for all the financial benefits being provided to the developers and yet receiving no credit toward meeting our Renewable Energy Requirements. Oregon ratepayers are also having to assuming the costs of the large transmission lines necessary to move the energy out of state since the utilities pass these costs on to the electricity users.
3. In addition to the existing wind developments, eight new developments covering over 324,308 acres of land in Oregon have either been approved and are awaiting construction, or are in the process of being cited by the Energy Facility Siting Counsel. They include: Baseline Wind Energy –36,351 acres; Brush Canyon – 76,000 acres; Heppner Wind Energy – 61,000 acres; Saddle Butte – 13,555

acres; Wheatridge – 50,000 acres; Montague – 33,402 acres; Golden Hills – 30,000 acres; Summit Ridge – 24,000 acres. These numbers only reflect the developments sited by the EFSC. In addition, there are developments covering thousands of additional acres which have been approved by the local counties and which are not tracked at any central location that I have been able to find. The attached map gives you a sense of the impact of these locally sited wind farms in combination with those EFSC is siting. I have been unable to find a central location which identifies locally sited developments in Oregon.

4. The EFSC has never allowed a member of the public a contested case hearing on an amended site certificate no matter how significant the impacts. This forces the impacted public to pay to go to the Oregon Supreme Court in order to have their issues heard. SB 258 would eliminate even that option because if the EFSC does not make a decision on the issues, there is nothing to appeal.

This bill should not go forward out of this committee. In the event that it does, there is an existing problem which should be addressed through an amendment as follows:

By statute the Energy Facility Siting Counsel does not have the authority to require an applicant to follow federal laws. As a result, they are approving site certificates that clearly show that there will be violations of federal wildlife laws. Two examples: 1. Site certificates provide no mitigation for the predicted level of impacts to golden eagles nor do they require a developer to EFSC approves site certificates with no mitigation for deaths to migratory birds or bats and they allow an arbitrary "Threshold of Concern" before they consider any mitigation for impacts. These are both violations of federal law and there have been public comments indicating there are groups considering legal action against the state for approving the breaking of federal laws.

Comments respectfully submitted by:

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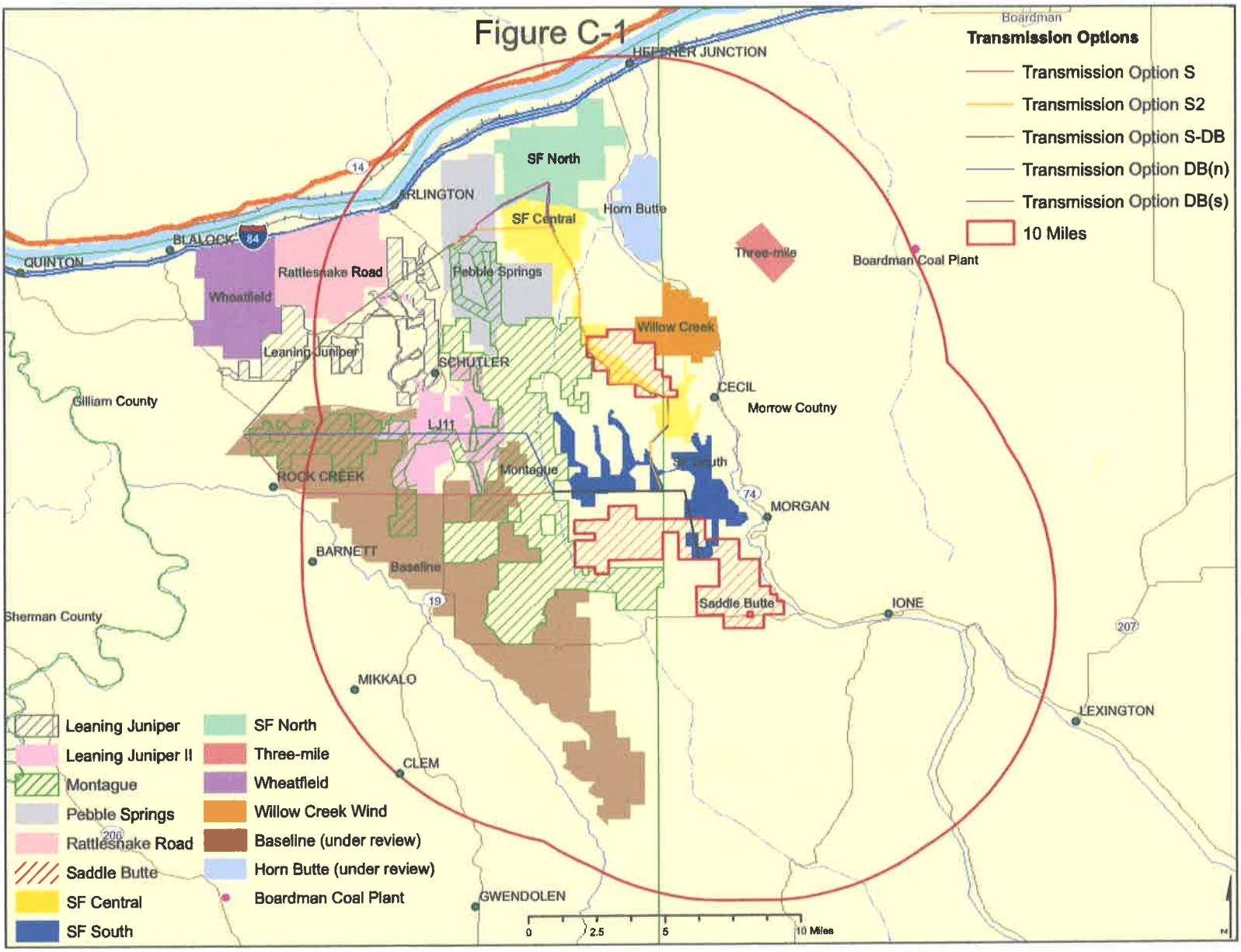

Saddle Butte Wind Farm

Figure C-1