



1 responsible state agency or local government must issue any necessary permits that are  
2 addressed in the site certificate without further proceedings. ORS 469.401(3).

3  
4 Based upon the discussion and conclusions contained in this Order, Council grants the  
5 site certificate for the proposed pipeline subject to the conditions stated in this Order.

6  
7 The definitions in ORS 469.300, OAR 345-001-0010 and the Project Order apply to  
8 terms used in this order unless stated otherwise.

9  
10 The Proposed Order's description of the nature of the ASC and the Procedural History  
11 thoroughly describes the process that culminated in the OOE's issuance of the Proposed  
12 Order to approve a site certificate for the proposed South Mist Pipeline Extension  
13 (SMPE) in September, 2002. While numerous parties dispute the adequacy of the  
14 applicant's efforts throughout the procedural history of the proposed pipeline, and the  
15 OOE's evaluation during the pre-application and application process, the Proposed  
16 Order's description of the procedural history itself is not controverted and the Council  
17 adopts it.

18  
19 **A. The Contested Case**

20 The parties and limited parties to the contested case challenged the Office of Energy  
21 (OOE) Proposed Order, which concludes that the Application for Site Certificate (ASC)  
22 submitted by Northwest Natural Gas (NWN) satisfies, or with conditions can satisfy, all  
23 applicable Energy Facility Siting Council (EFSC) siting standards. In addition, NWN has  
24 challenged specified proposed conditions of approval as unnecessary to establish  
25 compliance with the applicable EFSC siting standards and recommended modifications  
26 of others. Following evaluation of testimony and evidence from all participating parties  
27 and limited parties, including direct testimony, response testimony, cross-examination  
28 testimony, and final written argument, the Hearings Officer recommended that the EFSC  
29 adopt the OOE Proposed Order, approving the ASC, as modified through the  
30 Recommended Order. The Findings in this Final Order constitute findings of fact,  
31 reasoning and conclusions of law regarding compliance with each of the applicable siting  
32 standards. The Proposed Order is attached to this Final Order as Attachment C. The  
33 proposed conditions of approval in the Proposed Order are superseded by the Conditions  
34 of Approval contained in section V of this Final Order.

35  
36 **B. Procedural History of the Contested Case**

37 In conjunction with OOE's issuance of its September 19, 2002 Proposed Order, OOE  
38 issued a Notice of Contested Case Proceeding. In response to that Notice, the Hearings  
39 Officer received 60 requests for party status or limited party status. A Prehearing  
40 Conference was held October 22, 2002, to consider objections to requests for party status,  
41 Contested Case issues, and the Contested Case schedule. Following that Conference, on  
42 October 25, 2002, an Order on Petitions for Party Status was issued, granting party or  
43 limited party status to 56 of the 60 individuals or entities that had requested party and  
44 limited party status. All 56 parties or limited parties have had the opportunity to  
45 participate fully in all subsequent aspects of this Contested Case.

1 On November 8, 2002, an Prehearing Case Management Order was issued, which set  
2 forth substantive and procedural requirements for additional discovery requests, the  
3 substantive issues to be considered through the Contested Case, the requirements for the  
4 presentation of evidence and testimony, and the Contested Case schedule. As part of  
5 that Pre-Hearing Order, and in order to determine the necessity of considering and  
6 deciding a threshold legal interpretation issue prior to evaluation of the remaining legal  
7 and factual issues, the Hearings Officer invited the applicant to elect whether it intended  
8 to rely on ORS 215.283(1)(L) to support its proposed corridor. As explained in that  
9 Order:

10  
11 “With regard to the interpretation of ORS 215.283(1)(L), the Draft Proposed  
12 Order interpreted the statute to authorize outright the placement of utility facilities  
13 along side, i.e. parallel to but not within, the existing public right-of-way. The  
14 Proposed Order indicates that the statute could also be interpreted to authorize  
15 outright the placement of utility facilities only within the existing public rights-of-  
16 way. The applicant’s reliance on ORS 215.283(1)(L) to support its proposed  
17 corridor is unclear, though both its August 12, 2002 public hearing testimony and  
18 its October 22, 2002 Prehearing Conference memorandum indicate that it may not  
19 be relying on that statute to support its application. Specifically, the applicant’s  
20 August 12, 2002, testimony states, at page 4:

21  
22 “The purpose of this comment is to recommend that the Council  
23 adopt findings and conclusions in its Final Order that include an  
24 analysis based wholly upon ORS 215.275 for *all* portions of the  
25 Project, including those portions proposed within and along  
26 existing rights-of-way. These findings and conclusions would be  
27 in addition to reliance upon ORS 215.283(1)(L).”

28  
29 “If the applicant is relying wholly upon ORS 215.275 to establish compliance  
30 with the siting standards for all portions of the proposed corridor, including those  
31 within or along side existing rights-of-way, and is not relying on the draft  
32 Proposed Order’s interpretation of ORS 215.283(1)(L) to support its application,  
33 then the interpretation of that statute is unnecessary to the resolution of this  
34 Contested Case. However, the applicant’s additional statement indicating its  
35 additional reliance on ORS 215.283(1)(L), suggests that perhaps it may not be  
36 relying wholly upon ORS 215.275. If the applicant is relying on ORS  
37 215.283(1)(L) to establish compliance with the applicable siting standards, a  
38 threshold evaluation and interpretation of that statute is warranted in order to  
39 better define the remaining issues in this case. Therefore, in order to determine  
40 whether such a threshold interoperation of ORS 215.283(1)(L) is necessary, the  
41 applicant is invited to elect whether it intends to rely on ORS 215.283(1)(L) in  
42 establishing compliance with the siting standards.

43  
44 In response, the applicant submitted into the Record the following response:  
45

1           “The only legal issue raised by parties in this proceeding regarding ORS  
2           215.283(1)(L) is whether that authorization permits utility facilities outside of  
3           existing road rights-of-way. NW Natural does not elect to rely on ORS  
4           215.283(1)(L) for any pipeline locations outside the existing road rights-of-way.  
5

6           Accordingly, a threshold interpretation on the scope of that statute was not necessary.  
7           Although several parties objected to what they construed as the applicant changing its  
8           statutory reliance without changing its proposed route, in fact, an analysis of the  
9           applicant’s consistent position in this matter establishes that its statutory reliance has  
10          remained consistent throughout this process.  
11

12          In accordance with the schedule established in the November 8, 2002 Prehearing Case  
13          Management Order, parties filed written initial factual evidence and testimony and briefs  
14          challenging the proposed order on December 13, 2002; and rebuttal evidence and  
15          testimony and response briefs on January 3, 2003. Following a January 8, 2003 deadline  
16          for requesting cross-examination, Cross-examination hearings were conducted January  
17          15-17, 2003. Written closing argument was filed January 31, 2003. By Post-hearing  
18          order dated January 22, 2003, parties were invited to submit proposed findings and  
19          proposed conditions in their closing argument. That order specified that no new evidence  
20          would be permitted in the final closing arguments. No parties were afforded the  
21          opportunity to submit responses to the final closing argument, or to the proposed findings  
22          or conditions included with those written arguments. The Recommended Order was filed  
23          on February 14, 2003.  
24

25          Parties filed exceptions to the Recommended Order on February 25, 2003, and responses  
26          to exceptions on March 3, 2003. Parties also presented oral argument to the Council at a  
27          meeting on March 5, 6 and 7, 2003. The Council reached a final decision at a meeting on  
28          March 13, 2003. Based upon the review of the record, including the Application for Site  
29          Certificate, the Proposed Order, the Hearing Officer’s Recommended Order and findings  
30          contained therein, parties’ exceptions and responses to exceptions to the Recommended  
31          Order and oral argument of the parties, the Council adopts the OOE Proposed Order,  
32          attached to this Order as Attachment C, as modified by this order, and the Recommended  
33          Order, as specifically modified by this Final Order. The recommended conditions in the  
34          Proposed Order are superseded by the conditions adopted in this Final Order.  
35

36                 **C. Exceptions to the Recommended Order, and Responses to Exceptions**  
37

38          Fifteen parties submitted exceptions to the Recommended Order. The following  
39          discussion summarizes the arguments made in exceptions. Final decisions on the  
40          exceptions are discussed in the review of the Council’s standards, below.  
41

42          Greg Brown objected to the Hearing Officers recommended findings regarding  
43          compliance with the Council’s Structural Standard. Mr. Brown challenged the  
44          conclusion that NWN had adequately assessed the landslide hazard near Sherman Mill, at  
45          the extreme northern end of the corridor. He recommended a finding of noncompliance  
46          with that standard based on technical arguments, and on arguments that properly  
47          qualified experts did not review NWN studies. In the alternative, he offered new

1 condition language requiring NWN to install inclinometers (an instrument that measures  
2 landslide potential) and to conduct a two year program of monitoring prior to  
3 construction. *See* Mark Reeve Exceptions to Recommended Order on behalf of Greg  
4 Brown, p.5. Mr. Brown also argued that a new condition was required to meet the  
5 Council's Public Services Standard. The new condition proposed to require a NWN  
6 representative to be at the construction site at all times during construction in the Dairy  
7 Creek Valley, to ensure that roads were open for emergency vehicles.

8  
9 Friends of Parrett Mountain (FOPM) also challenged compliance with the Structural  
10 Standard, stating NWN had done inadequate subsurface investigation of the Sherwood  
11 Fault. FOPM stated that the opinion of their own expert should prevail, and that more  
12 detailed site specific study should be required, or the application should be denied.  
13 FOPM objected to recommended conditions requiring a geologist's presence during  
14 trenching in locations to which NWN had been denied access by property owners.  
15 FOPM argued that this condition would delegate the adequate characterization of the  
16 seismic hazard to NWN. FOPM also argued that the proposed pipeline presents an  
17 unreasonable safety hazard.

18  
19 The Staeheleys filed an exception based on public safety concerns. They argued that the  
20 pipeline could adversely affect the Department of Environmental Quality's program to  
21 remediate chemical contamination from a nearby helicopter facility. They offered expert  
22 testimony, and argued that the hydrogeologist hired by NWN lacked proper qualification.

23  
24 The Knights filed a procedural exception, based on the Knight's alleged failure to receive  
25 that original notice of the NOI in October of 1999. The Hearing Officer recommended a  
26 finding that the Knights had actively participated in the process since May 2000, well  
27 before the Application for Site Certificate was submitted. However, the Knights stated  
28 that they were denied meaningful opportunity because most of the important route  
29 decisions were made by May 2000. The Knights also requested a condition limiting  
30 NWN's ability to build secondary distribution lines.

31  
32 1000 Friends of Oregon filed exceptions to the Hearing Officer's overall interpretation of  
33 ORS 215.275(1) and (2). They stated that under the statute, public road right-of-way  
34 *within* the EFU zone is a "reasonable alternative" that must be considered and analyzed  
35 against the ORS 215.275(2) criteria. They further objected to the Hearing Officer's  
36 conclusion that the "necessary" test of ORS 215.275 is applied to the facility as a whole,  
37 stating that NWN must attempt to avoid EFU land at a local level. And, they argued that  
38 if NWN requests permission to site the pipeline within existing utility right of way under  
39 ORS 215.275(2)(d) then the corridor should be limited to that existing right of way.

40  
41 Washington, Marion and Clackamas County Farm Bureaus (Farm Bureaus) filed  
42 procedural exceptions, asking that evidence submitted by Dave Vanasche after the close  
43 of the evidentiary record be allowed.

44  
45 The Farm Bureaus also filed exceptions regarding ORS 215.283 and ORS 215.275. The  
46 Farm Bureaus argued that ORS 215.283(1)(L) only allows utilities in the EFU zone  
47 within the paved surface of road right of way. They also challenged that use of "safety"

1 (ORS 215.275(2)(e)) as justification for locating on farm land, noting that proposed  
2 pipeline uses road right of way in several places and therefore should use it everywhere.  
3 The Farm Bureaus further noted that a pipeline on farm land is vulnerable to digging by  
4 farmers, and that safety should not be a reason to avoid urban zones because there are  
5 already other pipelines in the urban zone.

6  
7 Regarding ORS 215.275(5), the Farm Bureaus filed exceptions to the recommendation  
8 that the Agricultural Impact Mitigation Plan be adopted, without many of the changes  
9 proposed by the Farm Bureaus. The Farm Bureaus urged the Council to adopt the  
10 changes suggested in their revision of the AIMP.

11  
12 Regarding site specific findings, the Farm Bureaus objected to recommended conditions  
13 allowing placement outside road right of way at certain properties for which NWN had  
14 done property specific analysis. Finally, the Farm Bureaus stated that the application  
15 should be denied because NWN failed to properly consider using available road right of  
16 way along Burkhalter Road.

17  
18 Dave Vanasche filed exceptions to the recommended approval of the AIMP. He stated  
19 that the AIMP simply documents steps that NWN took during their 1989 construction of  
20 the 16-inch South Mist Feeder pipeline.

21  
22 Larry Duyck also filed exception to the Hearing Officers' recommendation on the AIMP.  
23 He stated that OPUC requirements for all excavators to notify the Utility Notification  
24 Center place a severe burden on farmers, since farmers excavate several times per year.  
25 Mr. Duyck also filed exceptions to the Hearing Officers denial of the motion to admit  
26 new evidence.

27  
28 Phil Lapp filed an exception supporting proposed Land Use condition #2 (the split zone  
29 condition), which requires NWN to locate the pipeline on the non-EFU side of any road  
30 within the proposed corridor that is the dividing line between an EFU zone and an  
31 exception zone.

32  
33 Several parties (Vince and Ron Dobbin, Farm Bureaus, Terri Mann) excepted to factual  
34 conclusions regarding the suitability of Burkhalter Road as a "reasonable alternative" to  
35 EFU land. All of these parties disputed NWN's reasons for rejecting Burkhalter road.

36  
37 Many parties (Washington County, Ellyn McNeil, Farm Bureaus, 1000 Friends of  
38 Oregon) excepted to Land Use Condition #1a (the so called "standard land use  
39 condition") recommended by the Hearing Officer. This condition allowed NWN to use  
40 EFU land outside the road right of way if the County had designated the road as an  
41 arterial or collector. The Recommended Order proposed using the arterial/collector  
42 designation as a clear and objective criterion for determining whether the pipeline may be  
43 located outside public right of way to avoid other utilities. The parties argued that there  
44 was no evidence that arterials and collectors are less safe than local roads. The parties  
45 also stated that almost every road within the proposed corridor is an arterial or collector,  
46 effectively negating any farm land protection afforded by the Council's condition.

1  
2 Ellyn McNeil filed an exception requesting a limit on temporary construction easements  
3 along certain local roads, deleting part of the “split zone” condition allowing NWN to use  
4 EFU land in certain cases, limiting easement width to 40 feet in the Dairy Creek Valley,  
5 limiting temporary workspace to the proposed corridor, and suggesting that OOE hire its  
6 own Agricultural Inspector at NWN expense.

7  
8 NWN took exception to recommended Land Use Conditions #1 and #2, the so-called  
9 “standard” and “split zone” conditions. NWN also proposed new language allowing  
10 them to widen the construction zone with OOE approval. And, NWN took exception to a  
11 proposed condition requiring them to strip topsoil from the construction zone. They  
12 explained that this condition would require a wider construction zone, because more  
13 room would be needed to store the stripped topsoil.

14  
15 The Office of Energy also filed exceptions, pointing out certain cases where the proposed  
16 conditions in the recommended order were unclear or were not consistent with the text of  
17 the order. The Office simply recommended that the conditions be clarified and made  
18 consistent with the text. For example, the Hearing Officer recommended deleting a  
19 proposed condition regarding temporary access roads outside the proposed pipeline  
20 corridor. The Office sought to clarify that the Council cannot approve use of land outside  
21 the corridor that is described in the application.

22  
23 Responses to Exceptions: Six parties submitted responses to exceptions.

24  
25 Terri Ferrucci filed a response in support of the “split zone” condition.

26  
27 1,000 Friends of Oregon responded to the suggestion that NWN should be allowed to  
28 widen the construction easement with OOE approval. They suggested that any such  
29 change should be subject to public comment. 1,000 Friends of Oregon also objected to  
30 the claim that stripping additional topsoil from the construction area would require a  
31 wider construction easement. And, 1,000 Friends repeated their earlier suggestion that  
32 the “standard land use condition” should require a maximum use of road right of way.

33  
34 The Knights and Robbs excepted to NWN’s proposed language for site specific  
35 conditions proposed for their properties. Both parties live on roads where the Hearing  
36 Officer recommended a condition mandating use of the road right of way for the pipeline.  
37 The Knights and Robbs reiterated their support for that recommendation, and objected to  
38 changes proposed by NWN

39  
40 Farm Bureaus responded to NWN’s statement that stripping additional topsoil from the  
41 construction zone would require a wider easement. They proposed a different  
42 construction technique, which they felt would allow stripping of topsoil within a  
43 narrower easement. Farm Bureaus also objected to NWN proposal to allow wider  
44 construction easements with OOE approval. And, the Farm Bureaus supported OOE’s  
45 position that the Council should not approve temporary access roads outside the approved  
46 corridor. The Farm Bureaus strongly supported objections by Washington County and

1 others to the use of county road designation as arterials/collectors as a clear and objective  
2 criterion for determining whether the pipeline may be located outside public right of way  
3 to avoid other utilities. Finally, the Farm Bureaus objected to site specific conditions  
4 regarding certain properties where the proposed corridor is along a public road. The  
5 Farm Bureaus stated that these properties should fall under the “standard land use  
6 condition” that addresses use of road right of way more generally.  
7

8 NWN submitted detailed responses to all exceptions. NWN essentially reiterated and  
9 defended earlier factual and legal arguments in support of the Hearing Officer’s legal  
10 analysis of ORS 215.275, the Hearing Officer’s conclusions regarding the adequacy of  
11 the Agricultural Mitigation Plan, the recommended conditions allowing flexibility in  
12 determining the exact location of the pipeline within the approved corridor, and factual  
13 issues regarding public health and safety at specific properties. In some cases, NWN  
14 submitted new language and agreed to conditions suggested in other parties’ exceptions.  
15

16 The Office of Energy responded to exceptions filed by FOPM, Greg Brown, the Knights  
17 and Robbs, and NWN. The Office’s response was directed primarily at issues regarding  
18 the adequacy of the public process and allegations of unlawful delegation made in some  
19 of the exceptions. The Office also explained the rationale behind the proposed “standard  
20 land use condition” including the use of arterial/collector designation as a clear and  
21 objective criterion for determining whether the pipeline may be located outside public  
22 right of way to avoid other utilities.  
23

## 24 **Council’s Final Hearing and Oral Argument**

25  
26 As noted above, the Council held its final hearing on March 5, 6 and 7, 2003. All parties  
27 who had raised exceptions were given final opportunity to argue their position directly.  
28 Council’s final decisions regarding these issues are reflected in this Final Order. At the  
29 conclusion of the March 7 hearing, the Council decided that exceptions that were not  
30 raised in oral argument and specifically decided during deliberations would be denied and  
31 that the Hearing Officer’s recommended order should be adopted. In addition, the  
32 Council also decided that any pending motions not considered and specifically decided  
33 would be denied.  
34

## 35 **II. Procedural Motions**

### 36 **1. Motions to Extend Contested Case Schedule**

37  
38 Several parties challenged the schedule of the Contested Case, arguing that it did not  
39 provide all parties adequate time to thoroughly evaluate and submit evidence, testimony  
40 and argument on the factual and legal issues.  
41

42 As described in detail in the Proposed Order, the application process for the SMPE has  
43 extended over four years. While some participants have objected that they may not have  
44 received proper notice during the early portions of the process, all interested individuals  
45 and entities have had substantial time and opportunity to present factual and legal  
46 analysis of the proposal throughout this extensive time period. This contested case



1 process did not constitute the initial opportunity for any participant to research and offer  
2 evidence on any and all issues related to the requested site certificate. In fact, the factual  
3 and legal issues relevant to this case have been exhaustively raised and discussed  
4 throughout this extensive evaluation and review process. No party has presented any  
5 evidence to indicate that they did not have more than ample opportunity to fully present  
6 their evidentiary and legal testimony and argument. The Council finds that the parties  
7 have been well represented in this proceeding, despite the challenging timelines for the  
8 contested case and that the Council has a clear understanding of the arguments and  
9 positions taken by the parties. The parties have not been prejudiced by a lack of  
10 preparation time or by a lack of understanding by the Council. To prolong this Contested  
11 Case to extend the process even further would serve no substantive purpose. Council  
12 agrees with the Recommended Order and finds that there is no reason to delay final  
13 decision on this application further.

## 14 15 **2. Motion to Remand for Lack of Notice**

16 In their closing brief, Richard and Adela Knight (the Knights) reiterate their objection  
17 that they were not afforded proper notice of the 1999 Notice of Intent (NOI) , and that on  
18 that basis argue that the entire process should be remanded for the applicant to submit a  
19 new application. By affidavit, they testify that they did not receive notice of the SMPE  
20 until May 11, 2000 and that they have been “prejudiced” by the alleged lack of notice  
21 early in the process. They have not, however, established that they have been deprived in  
22 any way of fully participating in this process. To the contrary, they have been active  
23 participants and have had a full and fair opportunity to present any and all evidence and  
24 testimony. To the extent there may have been a notice violation, that procedural error has  
25 been fully cured by the Knights’ full participation in this process. The Knights filed  
26 exceptions to the Recommended Order and presented oral argument on this issue to the  
27 Council on March 5, 2003. The Council finds that the purpose of the Notice of Intent  
28 (NOI) is to identify standards and issues. The Council finds the requested remedy of  
29 remand of the entire proceeding will not cure deficiencies in notice during the NOI  
30 process and is too harsh a remedy for not receiving this notice. The Council denies the  
31 Knight’s motion and request for a remand.

## 32 33 **3. Motion to Submit New Evidence**

34 With its final written closing arguments, the Washington, Clackamas and Marion County  
35 Farm Bureaus et al<sup>1</sup> (Farm Bureaus) moved to submit new evidence into the record  
36 regarding pipeline safety in Iowa. Included with the motion were several newspaper  
37 articles regarding a 1999 pipeline accident, as well as other commentary regarding  
38 pipeline safety in Iowa. There was no explanation in the motion regarding why that  
39 evidence could not have been timely submitted into the record. In addition, testimony  
40 submitted by the Farm Bureaus in their closing brief, by Larry Duyck and David  
41 Vanasche, includes new evidence. As specified in the post-hearing case management  
42 order, no new evidence was permitted with the final written argument. The Farm

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<sup>1</sup>This closing brief, along with these parties’ other filings, were submitted on behalf of the Washington County Farm Bureau, the Clackamas County Farm Bureau, the Marion County Farm Bureau, David Vanasche, Philip Lapp, Stacey Rungay Button, LKS Corporation, dba Wil-Chris Acres, Doug Femrite, and Femrite Nursery Company.

1 Bureaus have not established that the new evidence they wish to add to the Record at this  
2 late date should be considered an exception to that order or that they should not be  
3 subject to this requirement. The Hearings Officer denied the motion and did not consider  
4 the new evidence in the Recommended Order.

5  
6 The Farm Bureaus and Larry Duyck submitted exceptions to the Recommended Order  
7 and asked the Council to allow the proffered new evidence into the record. NWN filed a  
8 response to the exception, which contained, in a separate document as an offer of proof,  
9 rebuttal to the proposed new evidence. Both parties argued their exceptions to the  
10 Council at the meeting on March 5, 2003. The Council agrees with the Recommended  
11 Order and finds that that the proffered evidence is untimely. The Council denies the  
12 motion to admit the additional evidence.

#### 13 14 **4. Objection to Proposed Condition**

15 On February 4, 2003, the attorney for Evelyn Staehely filed an objection to a proposed  
16 condition regarding the Staehely property submitted by OOE in its written closing  
17 argument. As stated above, all parties were invited to submit proposed conditions in their  
18 written closing argument. The contested case schedule did not provide for additional  
19 time for other parties to rebut or object to those proposed conditions. As with all other  
20 parties, Ms. Staehely was entitled to file exceptions to this Recommendation to the extent  
21 she contends conditions are unlawful or unnecessary to establish compliance with the  
22 siting standards. Ms. Staehely did file exceptions to the Recommended Order, but did  
23 not repeat this argument. The Council finds that there was no error in considering the  
24 condition proposed by OOE in written closing argument.

25  
26 The Council denies all of these procedural motions.

### 27 28 **III. Description and Location of Proposed Facility**

29  
30 The Proposed Order, at Section III, provides a thorough description of the proposed  
31 SMPE, and its location. As the Proposed Order describes in detail, in general, for the  
32 length of the proposed SMPE, NWN seeks approval of a 200 foot wide corridor, within  
33 which the SMPE will be located within a 40 foot permanent easement with an 80-foot  
34 construction easement. The Council adopts the description in the Proposed Order,  
35 attached to this Final Order as Attachment C, including the proposed conditions  
36 contained in Section III relating to laydown areas that may extend outside the 200-foot  
37 corridor.

38  
39 Since the application was filed, the applicant has not revised the location of its “Preferred  
40 Corridor” (and, in limited locations along the corridor route, an “Alternate Corridor.”) It  
41 has, however, further refined its analysis to define, in some instances, the proposed  
42 alignment of the pipeline within the 200-foot corridor for which it seeks approval. In  
43 November 2002, the applicant submitted into the Record a revised set of 44 panel maps,  
44 which depicts the currently preferred alignment of the SMPE within the corridor. With  
45 some noted exceptions, the currently preferred alignment is not represented to be a  
46 commitment on the part of NWN to site the pipeline in that exact location. Rather it is

1 represented to be NWN’s analysis at this point, as to the probable location of the pipeline,  
2 which is subject to adjustment based on “on the ground” considerations and the  
3 conditions of this site certificate.

4  
5 In some instances, the applicant has made representations regarding more exact locations  
6 of the pipeline. The Council deems those representations binding commitments by of the  
7 applicant and, pursuant to OAR 345-027-0020(10), includes them as conditions of this  
8 approval.<sup>2</sup> See Section IV.E, below.

9  
10 **IV. Evaluation of Compliance with Siting Standards**

11  
12 **A. EFSC Standards in OAR Chapter 345, Division 22**

13  
14 OAR Chapter 345, Division 22 sets forth the General Standards for the EFSC’s issuance  
15 of a site certificate for the proposed facility. The EFSC’s General Standard of Review is  
16 described at OAR 345-022-0000(1), and requires that the EFSC find that “the  
17 preponderance of the evidence on the record” supports a finding that the proposed facility  
18 complies with all requirements of the Oregon Energy Facility Siting Statutes and  
19 standards adopted by the Council to implement those statutes.

20  
21 **1. OAR 345-022-0010**  
22 **Organizational Expertise**

23  
24 The Proposed Order’s finding regarding the applicant’s compliance with the  
25 Organizational Expertise requirement of OAR 345-022-0010 has not been challenged in  
26 any credible respect. No party filed exceptions to the Recommended Order on this issue.  
27 The Council adopts the Proposed Order’s findings, reasoning and conclusions in finding  
28 that the ASC satisfies the Organizational Expertise standard.

29  
30 **2. OAR 345-022-0020**  
31 **Structural Standard**

32  
33 This standard requires that “to issue a site certificate, the Council must find that:

- 34  
35 “(a) The applicant, through appropriate site-specific study, has adequately  
36 characterized the site as to seismic zone and expected ground motion and  
37 ground failure, taking into account amplification, during the maximum  
38 credible and maximum probable seismic events; and  
39 (b) The applicant can design, engineer, and construct the facility to avoid  
40 dangers to human safety presented by seismic hazards affecting the site  
41 that are expected to result from all maximum probable seismic events. As  
42 used in this rule “seismic hazard” includes ground shaking, landslide,

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<sup>2</sup> OAR 34-027-0020(10) states that “The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.”

1 liquefaction, lateral spreading, tsunami inundation, fault displacement, and  
2 subsidence;

3 (c) The applicant, through appropriate site-specific study, has adequately  
4 characterized the potential geological and soils hazards of the site and its  
5 vicinity that could, in the absence of a seismic event, adversely affect, or  
6 be aggravated by, the construction and operation of the proposed facility;  
7 and

8 (d) The applicant can design, engineer and construct the facility to avoid  
9 dangers to human safety presented by the hazards identified in subsection  
10 (c).”

11  
12 The Proposed Order addresses this standard in detail, and concludes that the application  
13 satisfies all requirements of this structural standard, subject to compliance with proposed  
14 conditions. Two parties in particular challenged that conclusion in the contested case.

15  
16 a. Friends of Parrett Mountain Structural Standard issues

17  
18 Friends of Parrett Mountain (FOPM) challenge the ASC’s compliance with this standard,  
19 particularly as it relates to the Sherwood/Parrett Mountain area (Panels 28 and 29). They  
20 present evidence and testimony that NWN has not adequately characterized the site; has  
21 not conducted an adequate investigation of the Sherwood Fault; has failed to demonstrate  
22 that it has designed the facility to be capable of addressing and preventing dangers to  
23 human health and safety; and has not adequately characterized the potential geologic and  
24 soil hazards that could be aggravated by the construction and operation of the proposed  
25 facility. FOPM presents its own expert testimony, to counter that presented by NWN, to  
26 argue that NWN has not satisfied its burden to establish compliance with this standard.  
27 Based on its expert’s testimony, FOPM asserts there are several issues that NWN must  
28 investigate with much more thorough studies before it can conclude that the Sherwood  
29 fault does not create a seismic hazard or that there are not landslide issues that require  
30 more attention. As FOPM states in its closing brief, “FOPM does not contend that  
31 Northwest Natural’s approval criteria have been disproven by FOPM’s efforts. Rather,  
32 FOPM strongly contends that Northwest Natural has failed to satisfy its burden of  
33 proving compliance. FOPM Closing Brief at 3. FOPM reiterated its position in  
34 exceptions and in argument to the Council on March 5, 2003. FOPM argues that NWN  
35 has done inadequate subsurface investigation of the Sherwood Fault, that the opinion of  
36 their own expert should prevail, and that more detailed site specific study should be  
37 required, or the application should be denied. FOPM also objected to recommended  
38 conditions requiring a geologist’s presence during trenching in locations to which NWN  
39 had been denied access by property owners, because the condition would delegate the  
40 adequate characterization of the seismic hazard to NWN. NWN responded to the  
41 exceptions and also presented argument to the Council on March 5, 2003. NWN pointed  
42 to specific evidence in the record to argue that the investigation had been properly done  
43 and that the preponderance of evidence in the record supported a finding that the  
44 structural standard has been satisfied. OOE also filed a response to FOPM’s exceptions  
45 disputing FOPM’s overly restrictive interpretation of the requirement of “site-specific”  
46 analysis.

1  
2 There is no question that the expert testimony with regard to NWN's compliance with  
3 this standard as it relates to the Sherwood Fault in the Parrett Mountain area is  
4 conflicting. FOPM's expert contends there are issues that have not been adequately  
5 investigated, and argues that, based on his evaluation, there are potential structural  
6 standard deficiencies. NWN's experts disagree, and site to their own studies to support  
7 their assertion that all structural standard requirements are satisfied. Specifically, they  
8 contend that their studies show no evidence that the Sherwood Fault is active, and that in  
9 any event the pipeline can be designed and constructed to withstand "the maximum  
10 credible earthquake event" even if it were active. They also dispute the FOPM's expert's  
11 arguments regarding the possibility of landslide hazard in the Parrett Mountain area, and  
12 argue that, to the extent required observation during construction reveals any undetected  
13 slides, these conditions can be avoided or mitigated.

14  
15 FOPM's challenge raises some justifiable questions, for which additional conditions are  
16 warranted, as discussed below. However, underlying the arguments, its fundamental  
17 assertion is that NWN simply has not done enough to prove beyond a reasonable doubt,  
18 that each of the structural standard requirements is satisfied. However, while the  
19 structural standard requires that the applicant thoroughly evaluate all reasonable  
20 structural risks, it need not provide the level of proof FOPM's position would require.  
21 After review of the substantial amount of evidence provided by experts from both  
22 perspectives, the Council finds that, subject to compliance with conditions in the  
23 Proposed Order and additional Structural Standard conditions described below to further  
24 ensure compliance, there is a preponderance of evidence to support the Proposed Order's  
25 conclusion that the application satisfies the structural standard with regard to the  
26 Sherwood fault area.

27  
28 b. Greg Brown/Sherman Mill Landslide Area Structural Issues  
29

30 Greg Brown asserted similar arguments regarding structural standard compliance with  
31 regard to the Sherman Mill landslide area, arguing that NWN's analysis was incomplete  
32 and inadequate, and that OOE erred in failing to obtain independent review of NWN's  
33 analysis in that area. Mr. Brown submitted exceptions and provided oral argument to the  
34 Council at the March 5, 2003 hearing. NWN responded to Mr. Brown's exceptions and  
35 also provided oral argument to the Council.

36  
37 Again, while there is admittedly conflicting expert evidence, and significant differences  
38 of opinions from the competing experts, the Council finds that there is a preponderance  
39 of evidence in the Record to support the findings, reasoning and conclusions in the  
40 Proposed Order that the ASC satisfies this standard in this area, subject to conditions  
41 described below.

42  
43 c. Additional Structural Standard Conditions  
44

45 Based upon the questions and evidence presented regarding potential geologic issues, the  
46 OOE has recommended the imposition of several conditions to further ensure compliance

1 with this standard. First, in response to evidence from Greg Brown and FOPM, OOE  
2 recommends the following condition to address to critical areas where further study may  
3 be indicated:

4  
5 “In areas of critical geotechnical importance, trenching will not proceed without  
6 confirmation that OOE and DOGAMI have been notified at least one week in  
7 advance. This notice is required to afford OOE and DOGAMI the opportunity to  
8 send qualified monitoring personnel, which monitoring shall be performed at  
9 NWN expense. If NWN provides timely notice, the failure of OOE or DOGAMI  
10 to send qualified personnel shall not prevent NWN from performing the specified  
11 work. The critical areas are defined as the corridor north of the point where Dairy  
12 Creek Road terminates, and the corridor between Brookman and Tooze roads.  
13

14 In addition, in response to concerns raised regarding these critical areas where NWN may  
15 not have done site-specific investigations because they were denied permission for survey  
16 access, OOE recommends, and the Council agrees, that a condition be added to the  
17 Structural Standard conditions to require that a geologist or geotechnical engineer be  
18 present during trenching, with observations reported to OOE.  
19

20 In response to land slide concerns at Sherman Mill, NWN's expert, URS described the  
21 following landslide hazard monitoring program:

22  
23 NWN will follow a schedule of right of way monitoring for landslide hazard,  
24 based on the following criteria:

- 25  
26 - immediately after 4 or more inches of rain within 48 hours  
27 - immediately after 6 or more inches of rain within 7 days  
28 - immediately after a rain event.  
29

30 OOE recommended and the Hearings Officer agreed, that this commitment be made a  
31 condition of approval, with the added provision to explain that rainfall will be measured  
32 using METARS and RAWS, as described by URS consultant Dan Meier. NWN filed a  
33 request for clarification of this condition, stating that language had been left out of the  
34 description of the events that would trigger the monitoring. Additional argument  
35 addressed the appropriate location for the rainfall measurement. After considering the  
36 arguments of both sides, the Council adopts the following revised structural standard  
37 condition 6:

38  
39 NWN shall follow a schedule of right-of-way monitoring for landslide hazard,  
40 based on the following criteria:

- 41  
42 - immediately after 4 or more inches of rain within 48 hours  
43 - immediately after 6 or more inches of rain within 7 days  
44 - immediately after a rain on snow event that might have a similar effect  
45 as either of the above precipitation events.  
46

1 Rainfall shall be measured using METARS and RAWS at an appropriate location,  
2 including Miller Station, as described by URS.

3

4 With regard to the Sherman Mill landslide area, Mr. Brown's expert recommended more  
5 detailed subsurface exploration including additional borings, detailed ground  
6 reconnaissance, and use of vertical and horizontal inclinometers that may give advance  
7 warning of ground movement. As OOE explains in its closing brief, "OAR 345-027-  
8 0023(3)(b) requires use of the "best available practical technology to monitor the  
9 proposed pipeline to ensure protection of public health and safety." As OOE further  
10 explains, "Hart Crowser [Mr. Brown's expert] testified that inclinometers in conjunction  
11 with strain gauges are superior to strain gauges alone. NWN responded that they are not  
12 necessary, but there is no evidence that they are not the best available technology." On  
13 that basis, OOE recommended the following condition:

14

15 "In addition to strain gauges installed on the pipeline, NWN shall install vertical  
16 and horizontal inclinometers in appropriate locations to monitor for ground  
17 movement in the vicinity of the Sherman Mill slide. The installation shall be prior  
18 to or concurrent with pipeline construction. NWN shall monitor these instruments  
19 and provide OOE with documentation of the results for at least two years after  
20 installation. If the instruments indicate ground movement that is different from  
21 what was predicted in the ASC, NWN shall promptly report to the Council and  
22 describe any corrective actions necessary to alleviate danger to the pipeline."

23

24 Mr. Brown submitted exceptions to this proposed language and provided oral argument  
25 to the Council. The substance of Mr. Brown's argument is primarily that the monitoring  
26 of the inclinometers must be on a real time basis. Mr. Brown also requested that the  
27 Council impose a monitoring period of two years prior to construction. NWN, in its  
28 responses to exceptions, supported the additional structural standard conditions proposed  
29 by the Hearing Officer. The Council finds, in response to information in the record, and  
30 oral argument, that proposed Structural Standard condition number 7 be modified to  
31 provide for vertical and horizontal permanent inclinometer monitoring. The Council  
32 finds that real-time inclinometer monitoring is not justified due to a preponderance of  
33 evidence in the record demonstrating that the slide is not currently active, and the  
34 pipeline will not be constructed in the slide itself. In addition, the Council finds that  
35 NWN shall provide yearly reports of the monitoring results to the Council.

36

37 Based on the discussion above, the Council adopts all four of these additional structural  
38 conditions as modified by this discussion, as necessary to further ensure compliance with  
39 the structural standard.

40

### **3. OAR 345-022-0022**

41

#### **Soil Protection Standard**

42

43 The Soil Protection standard requires that:

44

45

46 "To issue a site certificate, the Council must find that the design, construction  
and operation of the facility, taking into account mitigation, are not likely to

1 result in a significant adverse impact to soils including, but not limited to,  
2 erosion and chemical factors such as salt deposition from cooling towers, land  
3 application of liquid effluent, and chemical spills.”  
4

5 Several parties have challenged compliance of the proposed pipeline with the Soil  
6 Protection Standard, based on projected impacts of the pipeline on agricultural land.  
7 Several area farmers have argued extensively that a previous pipeline installation has  
8 resulted in irreversible damage the productivity of the soils along that route, and urge on  
9 that basis that no amount of mitigation will effectively protect the soils.  
10

11 As the Proposed Order exhaustively explains, the Applicant has proposed in its  
12 application an Agricultural Impact Mitigation Plan (AIMP), which details NWN’s  
13 mitigation plans for any and all agricultural impacts, and specifically impacts to soil.  
14 That mitigation plan has been available for scrutiny and review by all participants to this  
15 process since the application was filed. The Proposed Order includes compliance with  
16 the AIMP as a condition of approval, to ensure compliance with both the Soils Protection  
17 Standard and ORS 215.275(5). However, many area farmers appear to discount the  
18 AIMP, regardless of its content, on the basis of previous experience of soil compaction,  
19 excessive rock, decreased productivity, and other soil impacts from pipeline installation  
20 when no AIMP was imposed. The argument is, essentially, that the proposed AIMP will  
21 be ineffective, either because mitigation not subject to the AIMP was ineffective or,  
22 perhaps, because no amount of mitigation could be effective.  
23

24 In its December 13, 2003 initial brief, the Farm Bureau proposed modifications to the  
25 AIMP. For the most part, these proposed modifications did not address the AIMP’s  
26 substantive provisions, or challenge the proposed mitigation measures in terms of their  
27 effectiveness in achieving the intended mitigation. Rather, the Farm Bureau proposes  
28 that the AIMP be modified in several respects to include specific compensation  
29 provisions to ensure farmers suffer no economic impact from the pipeline’s installation.  
30 With regard to these requested modifications, the Farm Bureau has not established that  
31 these proposed modifications to the AIMP are necessary or related to compliance with  
32 the Soils Protection Standard.<sup>3</sup> These proposed modifications do not enhance the soil  
33 protection components of the proposed AIMP or otherwise ensure that the design,  
34 construction and operation of the facility will not result in a significant adverse impact to  
35 soils.  
36

37 One proposed modification, however, does relate to compliance with the soils impact  
38 standard, and is premised upon a preponderance of evidence in the record. The AIMP, as  
39 drafted, requires segregation of topsoil down to a maximum of 12 inches. Several area  
40 farmers testified that, in fact, the topsoil may actually extend deeper in certain locations.  
41 The Farm Bureaus have recommended that the AIMP be modified to require segregation  
42 of topsoil to the “A” horizon in order to prevent an adverse impact on soil. There is no  
43 contrary evidence that indicates that this is infeasible or otherwise unwarranted in order

---

<sup>3</sup> The Farm Bureau’s arguments regarding the proposed modification as they relate to compliance with ORS 215.275(5) are addressed in findings regarding compliance with the Land Use Standard.



1 to provide more adequate segregation where the topsoil extends deeper than 12 inches.  
2 Thus, the Hearings Officer recommended that the Council require that the AIMP be  
3 modified to reflect this modification.

4  
5 NWN filed exceptions to the Recommended Order on this issue. NWN pointed out that  
6 stripping topsoil to the “A” horizon would require additional temporary storage area for  
7 the segregated topsoil. NWN proposed alternate language that would leave the decision  
8 about the depth of topsoil stripping to the landowner, and require the landowner to  
9 provide additional easement width to accommodate the additional storage area. The  
10 Farm Bureaus also filed exceptions to the Recommended Order, urging the Council to  
11 reconsider changes to specified conditions in the AIMP that had been rejected in the  
12 Recommended Order. Ellyn McNeil filed an exception requesting that the Council adopt  
13 a condition requiring NWN to provide funding for an agricultural inspector to oversee  
14 implementation and enforcement of the AIMP. NWN filed responses to the Farm  
15 Bureaus and McNeil exceptions, specifically agreeing to adopt certain of their  
16 recommendations.<sup>4</sup> The Council finds that the changes agreed to by NWN in its  
17 responses to exceptions are commitments by NWN that should be adopted as conditions  
18 in the AIMP. The Council adopts NWN’s commitment to fund an agricultural inspector  
19 as a new condition under the soil Standard. The Council also adopts the NWN proposal  
20 for a dispute resolution mechanism process for determining crop damage compensation.  
21 That process shall include a method for selecting a neutral third party to determine the  
22 compensation and shall require that NWN pay the compensation determined by the third  
23 party. This process shall be reflected in section 3(e) of the AIMP. The revised AIMP is  
24 attached to this Final Order as Attachment D.

25  
26 In its December 13, 2003 opening brief, NWN submitted a Post Construction Crop  
27 Monitoring Plan (PCCMP), to respond to concerns expressed by the public with regard to  
28 potential agricultural impacts after the pipeline construction is completed. NWN  
29 submitted this as its proposal to assure its obligations with regard to mitigating those  
30 impacts. The OOE has proposed that compliance with this PCCMP be included with the  
31 AIMP as a condition of approval. The PCCMP will further ensure compliance with this  
32 standard, as well as the land use standard. It is also effectively is a representation of the  
33 applicant, which the Council considers a binding commitment made by the applicant, and  
34 thus is also adopted as a condition of approval pursuant to OAR 345-027-0020(10).

35  
36 NWN has challenged the need for several soils protection conditions identified in the  
37 Proposed Order. Specifically, in its August 12, 2002 memorandum, (and reiterated  
38 during this contested case proceeding) NWN argues that Soils Protection Conditions 4, 6,  
39 7 and 9 should be deleted because they are unnecessary to ensure compliance with this  
40 standard, and that the AIMP fully addresses each of the concerns identified in those  
41 conditions. No other party responds to NWN’s challenges to these conditions. After  
42 review of the conditions, it appears that the AIMP provisions adequately address the  
43 issues identified in those conditions. No other parties filed exceptions or responses to the

---

<sup>4</sup> NWN captured these representations in a document title “Summary of NW Natural’s Agreed Modifications to AIMP”, which formed the basis for discussion of this issue during the Council’s deliberations.

1 Recommended Order regarding these issues. The Council finds that proposed Soil  
2 Standard conditions 4, 6, 7 and 9 should be deleted.

3  
4 Subject to the modifications to conditions addressed above, the Council adopts the  
5 findings, reasoning and Conclusions of the Proposed Order in finding that the ASC  
6 satisfies the Soils Standard.

7  
8 **4. OAR 345-022-0030**  
9 **Land Use Standard**

10  
11 As applied in this case, and as more fully described in the Proposed Order, the Land Use  
12 Standard requires that the Council find that the proposed facility complies with the  
13 Statewide Land Use Planning Goals, applicable substantive criteria of local  
14 comprehensive plans and land use regulations, and any LCDC administrative rules and  
15 any land use statutes directly applicable to the proposed facility.

16  
17 The Proposed Order explains in substantial detail, how the proposed facility satisfies the  
18 Land Use Standard. No party makes a credible substantive challenge to the findings and  
19 conclusions regarding compliance with the Goals and LCDC rules or the local  
20 comprehensive plans and land use regulations (included in Attachment A.) The Council  
21 adopts Attachment A as its findings, reasoning and conclusions concerning compliance  
22 with those land use standard requirements. Parties have put at issue compliance with the  
23 applicable land use statutory requirements, specifically ORS 215.213 or 215.283 and  
24 ORS 215.275,<sup>5</sup> which are addressed in Attachment B of the Proposed Order.

25  
26 The Proposed Order evaluates compliance with the Land Use Standard at length.  
27 Numerous challenges to the Proposed Order appear to challenge the applicant's  
28 compliance with various statutory requirements, without regard to the Proposed Order's  
29 exhaustive analyses of the application as applied to those requirements. A reiteration of  
30 every issue addressed in Attachment B of the Proposed Order would be not be  
31 productive, particularly in cases where parties have ignored the in-depth evaluation of the  
32 Proposed Order and have pursued factual or legal arguments that are premised on the  
33 failure of NWN (or OOE) to address them. Except for minor modifications addressed  
34 here, the Council adopts Attachment B of the Proposed Order, as its findings, reasoning  
35 and conclusions concerning compliance with the statutory requirements of the Land Use  
36 Standard. In the event of any conflict between this order and the Proposed Order, this  
37 order shall control.

38  
39  
40  

---

<sup>5</sup> As explained in detail on page 1 of Attachment B of the Proposed Order, for purposes of this case, ORS 215.213 and 215.283 contain identical requirements. ORS 215.213 applies to "Marginal Lands" counties, including Washington County, and 215.283 applies to all other counties, including Marion and Clackamas Counties. For ease of reference, these findings refer only to 215.283, though they are equally applicable to the entire facility.

1                   **A. Statutory Requirements**

2  
3                   **1. ORS 215.283(1)(L)**

4  
5                   ORS 215.283(1)(L) allows “\* \* \* the placement of utility facilities overhead and in the  
6 subsurface of public roads and highways along the public right-of-way, \* \* \* where no  
7 removal or displacement of buildings would occur, or no new land parcels result.”

8  
9                   OOE’s Draft Proposed Order interpreted the word “along” as applied in that statute, to  
10 allow, outright, the location of the proposed pipeline either within the public right-of-  
11 way, or immediately adjacent to it. During public hearings on the draft Proposed Order,  
12 numerous participants challenged that interpretation, arguing that ORS 215.283(1)(L)  
13 allows outright only location of utility facilities within the existing public road right-of -  
14 way. In response to those arguments, the Proposed Order finds that both interpretations  
15 are plausible, and offers an alternative “Standard Land Use Condition” in the event the  
16 Council determines that the statute allows outright only placement of the pipeline within,  
17 and not adjacent to, the public right of way. As set forth below, the Council has  
18 determined that ORS 215.283(1)(L) authorizes this proposed facility on EFU-zoned lands  
19 only within existing public road and highway rights-of-way. In part for this reason, the  
20 Council has adopted a version of the Standard Land Use Condition.

21  
22                   The applicant’s written testimony during the public hearings on the Draft Proposed Order  
23 indicated that its application did not rely wholly on an interpretation of ORS  
24 213.283(1)(L) that allowed the pipeline to be adjacent to the right-of-way, and instead  
25 appeared to assert that the application complies with all statutory requirements, regardless  
26 of how that statute is interpreted. Therefore, as described in the procedural history  
27 section of this Order, and to clarify the legal issues of this contested case, the Hearings  
28 Officer gave the applicant an option to elect whether to rely on ORS 215.283(1)(L) as  
29 allowing outright the placement of the pipeline adjacent to the existing road rights-of-  
30 way. As explained above, the applicant has elected not to rely on that statute as authority  
31 for the proposed facility, except where it is located within existing right-of-way.  
32 Therefore, under this Order, ORS 215.283(1)(L) is not relied upon as authority for siting  
33 the proposed facility outside of existing public road and highway rights-of-way in the  
34 EFU zones through which it passes.<sup>6</sup> ORS 215.283(1)(L) is a source of authority for  
35 siting temporary construction areas, as well as the permanent location of the facility, so  
36 long as the construction areas are located within the right of way.

37  
38                   The Farm Bureaus argue that the pipeline location is allowed outright under ORS  
39 215.283(1)(L) only if it is located under the hard surface of the road itself, and that it is  
40 not an allowed use if it is located within the road right-of-way but not under the road  
41 surface. Evelyn Staehely appears to share this argument, contending that the SMPE is  
42 statutorily required to be under the paved surface of the road.

---

<sup>6</sup> In locations where the proposed facility is allowed outright under ORS 215.283(1)(L), the Council may not impose any conditions on the proposed facility under that statute. The Council may have the authority, in such circumstances, to impose conditions under other statutory provisions.

1  
2 The Farm Bureaus continue to assert in exceptions to the Hearing Officer's  
3 Recommended Order that the order misconstrues ORS 215.283(1)(L). The Farm Bureaus  
4 note that public road rights-of-way are frequently farmed in EFU zones, and that  
5 consequently placement of pipeline can significantly affect farm practices. Farm  
6 Bureaus' Exceptions, at 8. The Farm Bureau's further argue that, because the use is not  
7 authorized outright under ORS 215.283(1)(L), the Council *must* condition the proposed  
8 facility (where it is not located underneath roads) to minimize and mitigate impacts on  
9 farm practices and the cost of farm practices

10  
11 As noted in the Proposed Order, the text and context of the statute are ambiguous, but the  
12 legislative history shows a clear understanding and legislative intent that the statute  
13 would authorize underground utilities within the public right-of-way. Based on the text,  
14 context, and the legislative history of this statutory language, the Council rejects the  
15 argument of the Farm Bureaus and Ms. Staehely, and finds that ORS 215.282(1)(L)  
16 authorizes the proposed facility where it will be located within a public road or highway  
17 right-of-way in an EFU zone. Further, the Council notes that it has adopted conditions  
18 that, to the extent possible, require the pipeline to be as close to existing roadways as is  
19 consistent with safety concerns, and that the mitigation conditions adopted by the Council  
20 apply to land in farm use within, as well as outside of, existing road rights-of-way. For  
21 these reasons, the Council denies the exceptions relating to the application of ORS  
22 215.283(1)(L) to the proposed facility.

## 23 24 **2. ORS 215.283(1)(d) and ORS 215.275**

25  
26 Where the proposed facility is not located within the existing public road or highway  
27 right-of-way, it is allowed in the EFU zones only to the extent that it complies with ORS  
28 215.283(1)(d) and ORS 215.275. Those statutes provide as follows:

29  
30 ORS 215.283(1)(d) permits in the EFU zones,

31  
32 “[u]tility facilities necessary for public service \* \* \*. A utility facility  
33 necessary for public service may be established as provided in ORS  
34 215.275.”

35  
36 ORS 215.275 provides:

37 “(1) A utility facility established under ORS 215.213(1)(d) or  
38 215.283(1)(d) is necessary for public service if the facility must be sited in  
39 an exclusive farm use zone in order to provide the service.

40  
41 “(2) To demonstrate that a utility facility is necessary, an applicant for  
42 approval under ORS 215.213(1)(d) or 215.283(1)(d) must show that  
43 reasonable alternatives have been considered and that the facility must be  
44 sited in an exclusive farm use zone due to one or more of the following  
45 factors:  
46

1                   “(a) Technical and engineering feasibility;

2  
3                   “(b) The proposed facility is locationally dependent. A utility  
4 facility is locationally dependent if it must cross land in one or  
5 more areas zoned for exclusive farm use in order to achieve a  
6 reasonably direct route or to meet unique geographical needs that  
7 cannot be satisfied on other lands;

8  
9                   “(c) Lack of available urban and nonresource lands;

10  
11                   “(d) Availability of existing rights of way;

12  
13                   “(e) Public health and safety; and

14  
15                   “(f) Other requirements of state or federal agencies.

16  
17                   “(3) Costs associated with any of the factors listed in subsection (2) of  
18 this section may be considered, but cost alone may not be the only  
19 consideration in determining that a utility facility is necessary for public  
20 service. Land costs shall not be included when considering alternative  
21 locations for substantially similar utility facilities. The Land Conservation  
22 and Development Commission shall determine by rule how land costs may  
23 be considered by evaluating the siting of utility facilities that are not  
24 substantially similar.

25  
26                   “(4) The owner of a utility facility approved under ORS 215.213(1)(d) or  
27 215.283(1)(d) shall be responsible for restoring, as nearly as possible, to  
28 its former condition any agricultural land and associated improvements  
29 that are damaged or otherwise disturbed by the siting, maintenance, repair  
30 or reconstruction of the facility. Nothing in this section shall prevent the  
31 owner of the utility facility from requiring a bond or other security from a  
32 contractor or otherwise imposing on a contractor the responsibility for  
33 restoration.

34  
35                   “(5) The governing body of the county or its designee shall impose clear  
36 and objective conditions on an application for utility facility siting under  
37 ORS 215.213(1)(d) or 215.283(1)(d) to mitigate and minimize the impacts  
38 of the proposed facility, if any, on surrounding lands devoted to farm use  
39 in order to prevent a significant change in accepted farm practices or a  
40 significant increase in the cost of farm practices on the surrounding  
41 farmlands.”

42  
43 While some parties have made cursory allegations that NWN has failed to satisfy the  
44 requirement of ORS 213.283(1)(d), that the facility is “necessary for public service,” no  
45 party makes a credible challenge to the Proposed Order’s finding of compliance with that  
46 statutory requirement, and the Council specifically adopts and incorporates the findings at

1 Attachment B pages 56 to 57 of the Proposed Order as the basis for its conclusions that  
2 the proposed facility is necessary for public service. Rather, the fundamental challenge  
3 in this case is to the legal interpretation of ORS 215.275, and the factual bases for the  
4 Proposed Order’s determination that the proposed facility satisfies that statute.

5  
6 a. Scope of ORS 215.275

7  
8 i. Consideration of Agricultural Land Use Policy

9  
10 Several parties, including 1000 Friends of Oregon and the Farm Bureaus, urge that the  
11 language of ORS 215.275 should be narrowly construed, in order to further the intent of  
12 ORS 215.243. As 1000 Friends argues, “these statutes [ORS 215.283(1)(d) and ORS  
13 215.275] must be read together with the state agricultural land use policy to preserve the  
14 maximum amount of agricultural land.” Accordingly, they urge that the statute should be  
15 read to prohibit the siting of utilities on farmland unless absolutely necessary.

16  
17 Conversely, NWN argues that ORS 215.275 is not subject to additional restrictions  
18 inferred from ORS 215.243. As NWN states in its Response Brief,

19  
20 “[t]he interpretation and implementation of ORS 215.275 is not directed by the  
21 agricultural policy in ORS 215.243. LUBA has rejected the very argument made  
22 by 1000 Friends:

23  
24 ‘It almost certainly is accurate to say that, in adopting ORS  
25 215.275, the legislature struck a particular balance between the  
26 siting of utility facilities in EFU zones and the statutory policy to  
27 preserve farmland for farm uses. Once that balance is struck,  
28 however, the county’s task is to apply the terms of the statute. We  
29 see no support in ORS 215.275 for requiring direct consideration  
30 of agricultural land preservation policies, external to the statute,  
31 in applying its terms. While the respondents are correct that  
32 applying the terms of ORS 215.275(2) requires some judgment, in  
33 the sense that the county must determine whether the evidence  
34 demonstrates, for example, that alternative non-EFU sites *are*  
35 *infeasible or unavailable for purposes of ORS 215.275(2)(a) and*  
36 *(c)*, exercise of that judgment does not require the county to also  
37 engage in an exercise of ‘balancing’ the technical difficulty of  
38 alternatives against farmland preservation. *Sprint PCS*  
39 *v. Washington County*, 42 Or LUBA \_\_ (LUBA No. 2002-042,  
40 Aug. 28, 2002, slip op at 6-7) (emphasis added.)’

41  
42 NWN Response Brief at 4-5.

43  
44 On February 19, 2003, the Oregon Court of Appeals affirmed LUBA’s analysis of the  
45 scope of ORS 215.275. *Sprint PCS v. Washington County*, 186 Or App 470 \_\_, \_\_ P2d \_\_  
46 (slip op. filed 2/19/03) (“Textually, the factors set out in ORS 215.275(2) define when it is

1 'necessary' to reject reasonable alternatives. Having identified, those six factors as the  
2 bases for rejecting otherwise reasonable alternatives, the legislature implicitly precluded  
3 consideration of additional factors in deciding when utility facilities must be sited on  
4 EFU land. \* \* \* When deciding whether it is necessary to site a public utility facility on  
5 EFU land, local governments must analyze any alternatives based on ORS 215.275.  
6 They may not import additional policy considerations into their analysis.") Contrary to  
7 1000 Friends' and others' argument, there is nothing in the text, context or history of the  
8 statute that compels additional consideration or balancing of the preservation of farmland  
9 in the application of the express terms of the statute.<sup>7</sup> The Council does not rely on the  
10 provisions of ORS 214.243 in applying ORS 215.275.

11  
12 ii. Consideration of Alternative EFU Routes  
13

14 1000 Friends and the Farm Bureaus, among others, also urge that ORS 215.275(2) must  
15 be read to require the applicant to consider potential alternative routes within EFU zones,  
16 as well as non-EFU alternatives, and fault NWN for failing to adequately consider EFU  
17 alternatives. However, even the Farm Bureau acknowledges that this interpretation of the  
18 statute is not consistent with its language. As the Farm Bureaus argue,  
19

20 "Despite language that appears to mandate otherwise, and despite rulings to the  
21 contrary by the Land Use Board of Appeals, the factors of ORS 215.275(2)  
22 cannot be read as requiring, or allowing, consideration of only non-EFU  
23 alternatives. Otherwise, factor (2)(c), lack of availability of urban nonresource  
24 lands, is rendered redundant for much of the state, and almost the entire SMPE  
25 corridor study area. Additionally, most parties and the Proposed Order agree that  
26 ORS 215.275(2)(d) requires consideration of existing rights of way that are  
27 located within the EFU zone." Farm Bureaus Closing Brief at 9.  
28

29 As the Farm Bureaus acknowledge, the language of ORS 215.275(2) does not expressly  
30 indicate whether the reasonable alternatives that must be considered are: (a) only non-  
31 EFU lands; (b) only EFU lands; or (c) any lands regardless of their EFU status. It is not  
32 necessary to resolve that question in this case, as NWN, OOE and the Council have  
33 considered all EFU and non-EFU locations that have been identified as alternatives.  
34

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<sup>7</sup> At the other end of the spectrum, FOPM argue that the language of ORS 215.275 frustrates the public interest because it permits the siting of gas transmission lines such as the SMPE in urban areas. They argue "The failure of ORS 215.275 to differentiate between gas transmission pipelines and other energy facilities has resulted in Northwest Natural selecting a route for this pipeline that passes through an area that is currently developed for residential use and will be developed for more intense residential use in the future. It was surely not the intent of the legislature that a pipeline capable of catastrophic explosion be sited within fifty feet of family homes." FOPM Closing Brief at 2. FOPM, however, does not challenge the Council's application of the statutory language. Rather, they argue that, notwithstanding the statutory preference for the route, because of its location the ASC fails to satisfy structural standard and safety concerns.

1 Furthermore, the fact that one or more of the ORS 215.275(2) factors cannot readily be  
2 applied to “reasonable alternatives” on non-EFU lands does not compel an interpretation  
3 of the statute that would require an applicant to evaluate alternative, EFU locations before  
4 concluding that the facility must be sited in an EFU zone. In fact, the language of ORS  
5 215.275(2) itself could textually be read to require two separate steps: first, consideration  
6 of what alternatives are reasonable; and second, documentation of why the use must be  
7 sited on EFU lands, based on one or more of the six factors.

8  
9 NWN explained what it construed to be its obligation under ORS 215.275:

10  
11 “(1) [T]he applicant must define the purpose of and need for the utility facility  
12 project; (2) *the applicant must determine whether there are any non-EFU*  
13 *alternative sites that may accommodate the project purposes and needs, i.e.,*  
14 *whether there are facially reasonable non-EFU alternatives; (3) if there are*  
15 *facially reasonable non-EFU alternatives, those alternatives must be analyzed*  
16 *according to the six factors listed in ORS 215.275(2); (4) the applicant bears the*  
17 *burden to demonstrate that the proposed facility must be located in the EFU zone*  
18 *based on one or more of those factors; (5) once it has been determined that the*  
19 *facility must be located in the EFU zone, it is incumbent on the applicant to*  
20 *restore agricultural lands as nearly as possible to their preconstruction conditions;*  
21 *and (6) once it has been determined that the facility must be located in the EFU*  
22 *zone, a governing body may impose clear and objective conditions to prevent the*  
23 *facility from having significant adverse impacts to, or significantly increasing the*  
24 *costs of, accepted farm practices on surrounding farm land.” NWN Response*  
25 *Brief at 4. (Emphasis added.)*

26  
27 The language of ORS 215.275(2) is ambiguous at best, and perhaps its language is  
28 incapable of a construction that allows each factor to be applied in the same fashion.  
29 Nonetheless, as noted above, NWN, OOE, and the Council have considered both  
30 alternative non-EFU locations and alternative EFU locations. Based on a preponderance  
31 of evidence in the record, NWN has shown that reasonable alternatives have been  
32 considered, and that the proposed facility must be sited on EFU-zoned lands based on  
33 multiple factors under ORS 215.275(2).

#### 34 35 b. ORS 215.275(2) Requirements

36  
37 Within the legal framework of ORS 215.275, several parties have challenged individual  
38 requirements and NWN’s factual analyses. In general, the Council adopts the reasoning  
39 and analysis in the Proposed Order, which analyzes the applicant’s compliance with ORS  
40 215.275 in excruciatingly complete detail. Only specified issues that warrant further  
41 discussion are addressed here.

#### 42 43 i. Consideration of Alternatives

44  
45 Several parties, including 1000 Friends and the Farm Bureau, challenge the adequacy of  
46 analysis of “reasonable alternatives” as required under ORS 215.275. Read in isolation,



1 these arguments would compel a conclusion that NWN’s analysis of alternatives routes  
2 for the proposed pipeline, and OOE’s scrutiny of that analysis, was cursory at best and  
3 wholly unsatisfactory in terms of compliance with ORS 215.275. Some specific  
4 alternative locations are suggested, though they are not proposed in relationship to other  
5 pipeline segments to which the proposed alternatives must necessarily connect. Many of  
6 the allegations consistent of argument that NWN failed to adequately consider more  
7 urban areas in greater detail.

8  
9 However, these numerous arguments fail to acknowledge, and in fact in most instances,  
10 wholly ignore, the extensive, in-depth alternatives analysis conducted by NWN, and the  
11 even more exhaustively complete analysis of those alternatives conducted by the OOE.  
12 The alternative routes that were considered were not limited to those chosen by NWN,  
13 but included routes based on proposals brought by the public, and requirements from  
14 OOE that NWN consider additional alternatives identified by the agency and those  
15 proposed by the public. The conclusory arguments that the “reasonable alternatives”  
16 analysis is incomplete appear to be based on a premise that each length of the pipeline  
17 must be evaluated independently, without regard to how they connect to form the whole  
18 of the proposed facility. Both 1000 Friends and the Farm Bureau urge that each separate  
19 “component” of the facility must be evaluated separately to determine whether some  
20 components could be sited in urban or non-resource land. Citing *City of Albany v. Linn*  
21 *County*, 40 OR LUBA 38, 47 (2001), the Farm Bureaus argue that

22  
23 “[s]eparate analysis and justification is required for each of the multiple  
24 components of a utility facility permitted on EFU land. \* \* \* In the case of a  
25 length facility such as the pipeline, with many different physical pieces, to be  
26 installed by various techniques, which traverses many separate public and private  
27 properties and farm operations, the required separate justification of each of these  
28 components may impose a difficult burden. The magnitude of that burden,  
29 however, is a function of the scope and the impacts of the proposed facility, and  
30 cannot be avoided because of the length of the pipeline and the extent of the  
31 required analysis.” Farm Bureau Closing Brief, 15.

32  
33 The Farm Bureau’s and 1000 Friend’s reliance on *City of Albany v. Linn County* is  
34 legally and factually misplaced. Unlike the proposed linear facility, the “components” of  
35 the facility at issue in that case consisted of actual separate components, which although  
36 they were physically connected to each other, did not necessarily require a relatively  
37 direct linear connection between defined geographic points in the same manner that the  
38 proposed facility in this case does. In that case, the “utility facility” at issue consisted of  
39 a water intake pipe, a pump station, finished water pipes, a treatment facility, a water  
40 storage reservoir and waste backwash facilities. Based on the nature of that facility,  
41 LUBA determined that separate analysis and justification is necessary, when the separate  
42 components of a utility facility are not necessarily required to be physically or  
43 geographically connected in any particular way. There are no independent  
44 “components” to this linear facility, in which each “section” of the pipe must necessarily  
45 be physically connected to the next, and which must begin at one location, pass through  
46 several others, and end at another location.

1  
2 Despite arguments to the contrary, as all parties are aware, the pipeline is not made up of  
3 separate “components” that could be placed in different locations. Nor can the location be  
4 determined on a property by property basis. Logic dictates that each section of the  
5 pipeline must be connected to the one before it and the one to come after it. Analysis of  
6 reasonable alternatives in this context appropriately focuses on both the facility as a  
7 whole (the entire length of the pipeline), and segments of the pipeline between constraint  
8 points (e.g., points that the facility must either pass through or must avoid). And each  
9 section must necessarily connect to the next. No purpose could be served by requiring  
10 consideration of individual properties, without regard to how the pipeline would travel to  
11 and from those properties. The Farm Bureaus do not explain the substantive purpose or  
12 the legal basis for their purported requirement of a “separate analysis and justification”  
13 for every “component” or length of pipeline, when those lengths are not independent  
14 components, but integral segments of a single facility. The statute does not require that  
15 the proposed facility be evaluated in the manner the Farm Bureaus urge.

16  
17 As exhaustively documented in the Proposed Order, there are numerous locational  
18 constraints along the pipeline route that compel placement of the proposed facility in  
19 particular locations, and that compel avoiding others. NWN’s analyses of alternatives,  
20 and OOE’s excruciatingly complete evaluation of the possible alternatives in the context  
21 of the locational constraints of the route, reveals that, contrary to the summary arguments  
22 that the applicant “has not done enough,” alternative routes have been thoroughly  
23 analyzed. An in-depth review of the numerous alternative routes evaluated reveals  
24 substantially more than a preponderance of evidence that NWN has established that  
25 “reasonable alternatives have been considered.” The Council adopts the Proposed Order’s  
26 alternatives and locational needs analyses.

27  
28 ii. Consideration of ORS 215.275(2) factors  
29

30 A fundamental point of controversy in this case concerns how the ORS 215.275(2)  
31 factors should or are required to be applied in this case. From the perspective of the Farm  
32 Bureaus, 1000 Friends and others, farm impact is of ultimate concern, and must take  
33 priority in all cases. From that perspective, if a facility can be located under the  
34 subsurface of the road or in the road right-of-way in order to avoid crossing EFU land,  
35 the facility must be sited there. Conversely, while NWN does not propose that farm  
36 impacts are incidental, NWN’s primary concern relates to safety, which it asserts must  
37 take priority. From that perspective, while locating the pipeline within the road right of  
38 way may be acceptable in specified situations, locating a pipeline in the subsurface of a  
39 road is the worst possible choice from a safety perspective. Thus, its proposed “Decision  
40 Making Protocol,” the method by which it would make the ultimate decision on the  
41 pipeline alignment within the proposed corridor, places much stronger emphasis on safety  
42 than on minimizing use of farm land.

43  
44 ORS 215.275 lists six factors that may be considered in determining the need to site a  
45 utility facility on EFU land. The statute specifically states that the need to site the facility  
46 on EFU land may be based on any one of those factors, which include public safety. If

1 consideration of one or more of these factors shows that the proposed facility "must be  
2 sited" on EFU-zoned land, the statute authorizes location of a utility facility on that EFU  
3 land. While some parties urge that construing the language in this manner violates the  
4 state policy for preservation of farmland, it is the language of the statute that controls.  
5

6 In fact, as the Proposed Order examines in detail, NWN's preferred corridor was, in most  
7 instances based upon more than one of the six factors. NWN acknowledges that safety  
8 was a factor – and a statutorily authorized factor – upon which it relied in determining the  
9 need to locate the pipeline within some EFU areas. Other factors also compelled the  
10 proposed route selection. As indicated above, in many respects, the route is locationally  
11 dependent, i.e. there are numerous locational "constraints" upon which the connecting  
12 sections of the route were geographically bound. That locational dependence in itself  
13 requires a great portion of the route to go through EFU land. In other locations, the  
14 availability of EFU right-of-way authorizes location in the EFU zone under ORS  
15 215.283(1)(L) and/or under ORS 215.275(2)(d). Where the availability of right-of-way is  
16 used as the justification for using EFU-zoned land, it is within the Council's authority to  
17 require that the use be limited to the right-of-way. Technical feasibility, particularly in  
18 the Dairy Creek area where, despite arguments to the contrary, NWN's route selection  
19 was compelled by a necessity to minimize slope and potential landslide hazards, also was  
20 a factor upon which NWN was authorized to rely.  
21

22 NWN does, however, rely on ORS 215.275(2)(c) (the "safety" factor) as the primary  
23 factor for why the facility must be sited on EFU-zoned land in some portions of the  
24 proposed route. Many parties may disagree with NWN's statutorily authorized reliance  
25 on "safety" as a factor to allow siting on EFU land, and urge that the statute be construed  
26 in such a manner to limit or constrain the use of safety as a factor.  
27

28 Numerous parties urge that if any increase in "safety" risk is a basis to site the facility in  
29 EFU land, then the applicant must first determine that it is "unsafe" to site it on urban or  
30 non-resource land. This requirement is not based upon the language of the statute. The  
31 statute simply provides that public safety may be considered as a factor in determining  
32 whether the proposed facility "must be sited" on EFU-zoned land. Based on the record in  
33 this case, and specifically relying on the evidence provided by NWN concerning the  
34 increased incidence of third-party dig-ins within road rights-of-way, and evidence  
35 provided by the Oregon PUC concerning safety risks and consequences, the Council  
36 finds that the increased public safety risk of non-EFU locations and road locations within  
37 the EFU zone justifies why this facility must be sited on EFU lands as proposed, with  
38 conditions designed to utilize road rights-of-way to the extent possible without creating  
39 unacceptable effects on safety risks.  
40

41 The arguments against reliance on safety as a factor appear, at least to some extent, to be  
42 based upon the premise that if a utility is sited on EFU land, farm uses are losing all the  
43 protection to which they are otherwise statutorily entitled. It may be that, as written,  
44 ORS 215.275 does expand the extent to which nonfarm uses are allowed on EFU lands.  
45 That question is not before the Council. Furthermore, the fact that safety is a factor upon  
46 which an applicant may rely in showing that a utility facility must be sited on EFU land

1 under ORS 215.275(2), does not eliminate the requirement that impacts of the use on  
2 farm practices must be minimized and mitigated. Those requirements, instead, are  
3 imposed in ORS 215.275(4) and (5). After the analysis is completed as required under  
4 ORS 215.275(2), and a decision is made to site a utility facility on EFU land due to one  
5 or more of the six factors, the applicant is mandated to site the facility in a manner that  
6 minimizes and mitigates EFU impacts. Thus, as the statute is written, none of the factors  
7 can “trump” the preservation of EFU land. Rather, the statute addresses protection of  
8 farm uses through requirements to restore the land and to minimize and mitigate impacts.  
9 Thus, as NWN points out, the statute does not “prevent utilities on farmland but [permits]  
10 them in EFU-zones, in appropriate circumstances, while also ensuring that the  
11 agricultural impacts can be minimized or mitigated.”

12  
13 Finally, as discussed below in more detail, ORS 469.401(2), like ORS 215.275(5)  
14 requires the Council to adopt conditions. ORS 469.401(2) requires conditions for the  
15 protection of the public health and safety. The Council finds that the conditions it has  
16 adopted appropriately harmonize the statutory requirements of 469.401(2) and  
17 215.275(5).

18  
19 iii. Required Use of Rights-of-Way under ORS 215.275(2)(d)  
20

21 Finally, several parties, including particularly the Farm Bureaus, urge that ORS  
22 215.275(2)(d) must be read to require that, if the corridor includes a right-of-way, the  
23 pipeline must be sited within that right-of-way to reduce impacts to EFU land. The Farm  
24 Bureaus and Evelyn Staehely extend that argument to urge that in those locations, the  
25 pipeline must be located under the pavement of the road, as distinct from that portion of  
26 the right-of-way that is not paved. However, as noted above, the text, context and  
27 legislative history of ORS 215.283(1)(L) do not support such a construction of that  
28 statute, and there is nothing relating to 215.275(2)(d) that suggests that result. Where the  
29 availability of the road right-of-way is relied upon as *the* factor for siting a utility facility  
30 within the EFU zone, however, it is reasonable for the Council to require that the pipeline  
31 be sited within the road right of way to ensure that the basis for the authorization is  
32 maintained. In addition, any requirement that the pipeline be sited within any portion of  
33 the road right of way may also be based on ORS 215.275(5), and predicated on a finding  
34 that there is a preponderance of evidence in the record that the proposed facility will  
35 result in significant changes in accepted farming practices or the cost of such practices on  
36 lands devoted to farm use.” Application of the provision to this case is discussed below.  
37

38 The Preferred Corridor (along with specified alternative corridors), upon which NWN’s  
39 ASC is based, and which OOE has scrutinized in exhaustive detail in the Proposed Order,  
40 satisfies the requirements of ORS 215.275(2). Subject to recommendations regarding  
41 specified locations along that corridor, discussed below, and as supplemented and  
42 modified by the above discussion, the Council adopts the reasoning and conclusions of  
43 the Proposed Order with regard to compliance with ORS 215.275(2).  
44

45 c. ORS 215.275(4) and (5)  
46

1 As discussed above, once the determination is made to site a utility facility on EFU land,  
2 ORS 215.275(4) and (5) require that impacts to EFU land be minimized and mitigated.  
3 To reiterate, those statutory provisions require the following:

- 4
- 5 (4) The owner of a utility facility approved under ORS 215.213(12)(d) or  
6 215.283(1)(d) shall be responsible for restoring, as nearly as possible,  
7 to its former condition any agricultural land and associated  
8 improvements that are damaged or otherwise disturbed the siting,  
9 maintenance, repair or reconstruction of the facility. Nothing in this  
10 section shall prevent the owner of the utility facility from requiring a  
11 bond or other security from a contractor or otherwise imposing on a  
12 contractor the responsibility for restoration.
- 13 (5) The governing body of the county or its designee shall impose clear  
14 and objective conditions on an application for utility facility siting  
15 under ORS 215.213(1)(d) or 215.283(1)(d) to mitigate and minimize  
16 the impacts of the proposed facility, if any, on surrounding lands  
17 devoted to farm use in order to prevent a significant change in  
18 accepted farm practices or a significant increase in the cost of farm  
19 practices on the surrounding farmlands.

20

21 i. ORS 215.275(5) as siting requirement

22

23 The Farm Bureaus urge that ORS 215.275(5) constitutes a siting requirement, requiring  
24 that the applicant conduct an EFU-alternatives analysis after a decision is made to site a  
25 utility facility on EFU land. The Farm Bureau argues:

26

27 “Even if ORS 215.275(2) does not permit consideration of alternative  
28 locations zoned EFU, subsection 5 compels consideration of EFU  
29 alternatives after a decision has been made that the facility must be sited  
30 on EFU land. EFU locational alternatives that must be considered  
31 pursuant to subsection 5 are those that would lessen the adverse impacts of  
32 the utility facility on accepted farm practices.” Closing Brief at 10.

33

34 The language of ORS 215.275(5) does not support the Farm Bureaus’ interpretation of it.  
35 That section is not a siting criterion. Rather, under the express language of the statute,  
36 once the locational decision is made under ORS 215.275(2), to the extent that the siting  
37 locations will cause “a significant change in accepted farm practices or a significant  
38 increase in the cost of farm practices on the surrounding farmlands”, then conditions must  
39 be imposed to “mitigate and minimized the impacts of the proposed facility” in order to  
40 prevent those impacts. There is nothing in the language of ORS 215.275(5) to indicate  
41 that the mitigation of impacts requires an alternatives analysis as a siting criterion  
42 following the siting decision required under ORS 215.275(2).

43

44 ii. Requirements of ORS 215.275(4) and (5)

45

1 The Farm Bureaus, as well as other parties, also argue that NWN and OOE have  
2 misapplied ORS 215.275(4) and (5) by proposing the same AIMP to satisfy both  
3 statutory requirements. They argue that the two requirements are independent and cannot  
4 be satisfied by the same document. To the contrary, subsection (4) obligates the owner of  
5 a utility facility to “restore” “agricultural land and associated improvements that are  
6 damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the  
7 facility.” In order to satisfy that obligation, NWN proposed the AIMP, which outlines in  
8 detail how NWN will restore agricultural land and improvements that may be damaged or  
9 disturbed by the siting, maintenance, repair or reconstruction of the facility. NWN has  
10 supplemented the AIMP with a PCCMP that further clarifies NWN’s continuing  
11 obligation after construction, to restore such possible damage or disturbance. The  
12 Council is authorized under OAR 345-027-0020(10) to consider the AIMP and the  
13 PCCMP to be commitments by the applicant, and on that basis impose them as conditions  
14 of the approval. For purposes of ORS 215.275(4), however, the AIMP and PCCMP  
15 satisfy the utility owner’s restorative obligation.

16  
17 In its exceptions to the Recommended Order, the Farm Bureaus assert that the Council  
18 may not rely on the AIMP to satisfy the requirements of ORS 215.275(4) and (5) because  
19 of "discretionary aspects" of the AIMP. The Council has required revisions to the AIMP,  
20 described elsewhere in this order, and has adopted condition under "Additional  
21 Conditions to Mitigate Agricultural Impacts" (requiring OOE oversight over  
22 implementation of the AIMP) in response to these concerns. These changes avoid any  
23 delegation to NWN, and along with other Council authorities provide for continuing  
24 oversight by the Council and OOE over the AIMP and the PCCMP.

25  
26 As distinguished from subsection (4), subsection (5) requires the governing body, in this  
27 case the Council, to impose conditions on the ASC approval to mitigate and minimize  
28 impacts if the utility siting would cause a significant change in accepted farm practices or  
29 a significant increase in the cost of farm practices on the surrounding farmlands.” If no  
30 such impacts are established, the Council cannot, under this subsection, impose such  
31 conditions. Once such impacts are established, however, and notwithstanding arguments  
32 to the contrary, there is nothing in this statute, or any other statute, ordinance, or rule, that  
33 would preclude the Council from adopting a mitigation document prepared by the  
34 applicant to achieve that necessary mitigation. The argument that the mitigation  
35 condition must be devised and drafted by the governing body is without authority or  
36 support.

37  
38 ii. Mitigation requirements of ORS 215.275(5)

39  
40 Numerous parties have submitted evidence and testimony that the SMPE will cause a  
41 significant change in accepted farming practices, or a significant increase in the cost of  
42 farming. While NWN disputes much of this evidence, it has no objection to, and in fact  
43 has proposed the AIMP and the PCCMP to restore agricultural lands impacted by the  
44 SMPE, and to mitigate and minimize impacts of the SMPE on farm practices and the cost  
45 of farm practices. Although the evidence is conflicting in some instances, there is a  
46 preponderance of evidence in the record that, without mitigating conditions, the siting of

1 the proposed SMPE could cause significant change in accepted farm practices or a  
2 significant increase in the cost of farm practices on the surrounding farms (which the  
3 Council finds are those farms with lands within the 200' corridor proposed by the  
4 applicant). Thus, the Council is authorized and required under ORS 215.275(5) to  
5 impose clear and objective conditions to minimize and mitigate those impacts.

6  
7 a. AIMP and PCCMP  
8

9 NWN has proposed that the AIMP, as supplemented by the PCCMP, will achieve that  
10 required mitigation under ORS 215.275(5). Several parties challenge that contention.  
11 Several farmers in particular dispute that any amount of mitigation will adequately  
12 mitigate the damage they assert will result from the pipeline construction and  
13 maintenance. While some parties dispute generally the adequacy of the provisions within  
14 the AIMP, to a large extent, the objecting parties base their skepticism on the results of  
15 past pipeline construction. Several area farmers testified that areas subject to past  
16 pipeline construction have been permanently damaged, with crop yields severely reduced  
17 or never recovered. Several farmers also specifically identified soils compaction from  
18 past pipeline construction as, as well as excessive rocks left following construction, as  
19 causing permanent damage to their fields and crop productivity.

20  
21 Skepticism and reluctance of area farmers whose farms have been previously adversely  
22 affected by previous pipeline construction is understandable. However, the evidence in  
23 the record indicates that previous pipeline construction was not subject to type of  
24 mitigation recommended in this case. Thus, this evidence, while establishing factual  
25 impacts from previous pipeline construction, is not determinative of whether impacts can  
26 be minimized or mitigated when subject to the extensive procedures mandated by the  
27 AIMP and PCCMP. Conversely, there is also a preponderance of evidence in the record  
28 that measures similar to those proposed by NWN in the AIMP and PCCMP have been  
29 successful in preventing permanent impacts to farm land.

30  
31 As discussed with regard to the Soils Protection Standard, the Farm Bureaus also  
32 challenged the adequacy of the AIMP, and proposed modifications to that Plan in order to  
33 provide better protection to area farmers. As discussed above, the Hearings Officer  
34 recommended adoption of one of these proposed modifications, regarding the segregation  
35 of topsoil. Otherwise, the proposed modifications are generally directed at ensuring  
36 adequate protection and compensation to area farmers from impacts from the  
37 construction and maintenance of the pipeline. However, neither ORS 215.275(4) or (5),  
38 nor any other statute identified by the parties authorizes the Council to require the holder  
39 of a site certificate to compensate property owners for the financial effects of the  
40 acquisition of easements for an energy facility. ORS 215.275(5) does authorize, and in  
41 fact requires, the Council to impose conditions on how the use is carried out to minimize  
42 and mitigate impacts of the use, but there is no authority to require compensation (the  
43 Council may require an applicant to carry out *voluntary* representations the applicant has  
44 made as part of the siting process, under OAR 345-27-0020(10)).

1 While the evidence is conflicting, the Council finds there is a preponderance of evidence  
2 in the Record that the AIMP and PCCMP, as both modified by the Hearing Officer's  
3 recommendations, and as further modified below, will adequately restore agricultural  
4 land, as nearly as possible to its former condition, as required by ORS 215.275(4), and,  
5 imposed as a condition of approval, will minimize and mitigate impacts to farm practices,  
6 as required by ORS 215.275(5).<sup>8</sup> Thus, compliance with both the AIMP and the  
7 PCCMP, as modified, is required as a condition of the site certificate approval. With the  
8 exception of the modification regarding the segregation of top soil, and the other  
9 modifications set forth below, the Council finds that the AIMP modifications proposed  
10 by the Farm Bureaus are not necessary to minimize or mitigate impacts of the proposed  
11 facility on farm practices or the cost of farm practices.

12  
13 The Council modifies paragraph 3e of the AIMP to include language that assessment and  
14 evaluation of claims will be done by an independent third party, to be found acceptable  
15 by NWN and a representative of the three County Farm Bureaus, and that whatever  
16 amount of compensation determined to be appropriate by that third party be paid by  
17 NWN. In addition, the agreements reflected in the document "Summary of NWN's  
18 agreed modifications to AIMP" shall become part of the AIMP. The modified AIMP  
19 provisions are also addressed elsewhere in more detail in this order.

20 Based on the provisions of the AIMP and the PCCMP, as modified, and the conditions  
21 governing the location of the proposed facility, the Council finds that the facility  
22 complies with the requirements of ORS 215.275(4) and ORS 215.275(5).

23  
24 b. Additional mitigation requirements

25  
26 In addition to the AIMP and PCCMP, and based upon representations made by NWN in  
27 its testimony, two additional conditions (that are considered as commitments under OAR  
28 345-27-0020(10)) are adopted by the Council. These conditions also provide mitigation  
29 that may be relevant to ORS 215.275(5), although they are not adopted under that  
30 authority. In order to clarify the restrictions on crop-prohibition within the permanent  
31 easement, NWN has represented:

32  
33 "Crops prohibited over the pipeline shall be limited to mature fruit and nut trees,  
34 nursery crops and ball and burlap crops that require mechanical digging or hand  
35 digging greater than 3 feet, Christmas trees that are more than 10 years old, fence  
36 posts, permanent structures, and other large trees that grow to maturity. Crops  
37 shall be allowed within 5 feet of the pipe centerline, for a total crop-free width of  
38 10 feet. Farmers may cross the pipeline above or below the pipe for water service  
39 and drainage, with prior notification to NWN."  
40

---

<sup>8</sup> Compliance with the AIMP, as modified, and the PCCMP, also are imposed as a condition of approval to ensure compliance with the Soils Standard. While not repeated in the Land Use Standard Conditions, these conditions also avoid certain impacts that might otherwise trigger mitigation requirements under ORS 215.275(5).



1 This condition has been modified slightly to ensure that it will be clear to farmers, and  
2 that it does not create unacceptable safety risks relating to the pipeline, as proposed in  
3 NWN's exceptions. No parties objected to the modifications, which appear in condition  
4 1) under "Additional Conditions to Mitigate Agricultural Impacts."

5  
6 In addition, responding to farmers' concerns that a prohibition on an effective method of  
7 gopher control would force a serious cost increase in their farming operation, NWN has  
8 represented:

9  
10 "NWN shall not preclude use of propane blasters for gopher control on private  
11 property near the easement. The company shall analyze and negotiate the use of  
12 such equipment in close proximity to the pipeline."

13  
14 These conditions avoid certain possible impacts of the proposed facility on farm practices  
15 or the cost of farm practices. While they are adopted under the Council's authority under  
16 OAR 345-27-0020(10)), the Council finds that they also avoid the necessity of further  
17 conditions under ORS 215.275(5).

18  
19 c. Standard Land Use Condition v. Decision Making Protocol

20  
21 As the Farm Bureaus and others correctly recognize, within the approved 200-foot wide  
22 corridor, there are locations that will have greater impact on farm practices than others.  
23 Siting restrictions within the corridor are necessary in some instances in order to  
24 minimize and mitigate those impacts.

25  
26 In order to minimize and mitigate agricultural impacts along the entire SMPE route, the  
27 Propose Order adopts a "Land Use Standard Condition 1." As originally drafted, that  
28 condition relied on an interpretation of ORS 215.283(1)(L) that would permit the SMPE,  
29 outright, both within and adjacent to the road right-of-way. That condition provided:

30  
31 "Where the proposed corridor is located along existing public road or highway  
32 right-of-way (whether or not that right-of-way is improved) within the EFU  
33 district, both the construction and the maintenance/operation easements shall be  
34 located within or adjacent to the existing public road or highway right-of-way. In  
35 this condition, the term adjacent means contiguous. If the construction easement  
36 is along public right-of-way, NWN shall utilize public right-of-way for as much  
37 of the 80-foot construction corridor as practical. The construction corridor shall  
38 not utilize more than 40 feet of land in the EFU zone outside public right-of-way  
39 without express site-specific authorization from OOE. These restrictions shall not  
40 apply to the corridor along public roads outside the EFU zone.

41  
42 Following NWN's election not to rely on the Draft Proposed Order's interpretation of  
43 ORS 215.283(1)(L), the OOE revised its proposed Land Use Standard Condition 1 to  
44 provide:

1 “Where the proposed corridor includes existing public road or highway  
2 right-of-way (whether or not that right-of-way is improved) within the  
3 EFU district, both the construction and the maintenance/operation  
4 easements shall be located within the existing public road or highway  
5 right-of-way. This condition shall not apply to the corridor outside the  
6 EFU zone, or where site certificate conditions specifically authorize the  
7 proposed use on EFU land outside the public right of way.”  
8

9 NWN challenges that proposed condition, arguing that it is not warranted by the language  
10 of ORS 215.275(2), that it is “unworkable” because it does not permit additional  
11 temporary workspace outside of existing rights-of-way, and that it fails to acknowledge  
12 the potentially adverse safety ramifications of locating the pipeline within the right-of-  
13 way, without regard to other relevant factors. NWN proposed, instead, that the Council  
14 adopt its “Decision Making Protocol,” as the basis upon which NWN would determine its  
15 final alignment within the Preferred Corridor. NWN explained that “Decision Making  
16 Protocol” (Attachment 2 to NWN’s December 13, 2002 Opening Brief) as follows:  
17

18 ““This decision-making protocol has been used by the Northwest Natural  
19 (“NWN”) in selecting the centerline of the pipeline within the 200 foot corridor  
20 proposed by NWN. The decision-making protocol responds to ORS 215.275(4)  
21 and (5) which call for impacts on farmland to be minimized and mitigated.  
22

23 “The decision-making protocol relies upon four basic steps in identifying the  
24 location of the center line of the pipeline in any given location along the Preferred  
25 Corridor. It proceeds in order of priority from locating the pipeline in an existing  
26 private easement available to NWN and then proceeds to determine whether that  
27 easement is available or can be expanded to make it available. If the private  
28 easement is not available or cannot be expanded, the pipeline will be considered  
29 for placement adjacent to a public right-of-way. If an area adjacent to the public  
30 right-of-way is not available then the pipeline will be considered for placement in  
31 the public right-of-way. If none of these alignments is viable, then a non-existing  
32 easement or non-right-of-way alignment is used. Each of the basic steps must  
33 consider a series of factors in making the determination. Attached to this  
34 document are the factors that should be considered. The factors are grouped in  
35 five categories: safety concerns, agricultural impact concerns, technical concerns,  
36 environmental concerns, or geotechnical concerns.  
37

38 In many circumstances competing factors will exist. Each factor should be  
39 considered and a determination based upon the considered factors should be  
40 made. NWN has followed this four-step process in making its determination as to  
41 where the pipeline should be placed.”  
42

43 Thus, the four-step process prioritizes the potential alignment locations, as follows:  
44

- 45 1. Within existing private easement available to NWN

- 1           2. Expansion of that private easement, if a easement available in (1) is too
- 2            narrow;
- 3           3. If existing or expanded private easement is not available, within or adjacent to
- 4            existing public right of way; and
- 5           4. If 1-3 are not available, “select the best non-existing easement or non-right-of-
- 6            way alignment within the 200-foot corridor.”

7  
8 Under each of the four options, the Protocol calls for consideration of:

- 9
- 10           (a) safety concerns
- 11           (b) agricultural impact concerns
- 12           (c) technical concerns
- 13           (d) environmental concerns
- 14           (e) geotechnical concerns.

15  
16 NWN explains that its “current preferred alignment,” depicted on its November, 2002  
17 Panels, is a result of the application of its Decision Making Protocol to the Preferred  
18 Corridor. NWN urged that compliance with this Protocol should be imposed as a  
19 condition of approval instead of OOE’s proposed Land Use Standard Condition 1.

20  
21 In support of the safety priority within its Decision Making Protocol, and its preference to  
22 locate the pipeline outside of road rights-of-way, NWN provided evidence regarding the  
23 safety risks of locations within existing road right-of-way. The record includes  
24 documentary evidence submitted by NWN showing that 84 percent of the damages from  
25 third-party activity over a six year period occurred to pipelines located in road rights-of-  
26 way, with only 52 percent of the transmission pipe located in road rights-of-way. Bruce  
27 Paskett, NWN’s safety expert testified that the high percentage of accidents was due to  
28 the level of activity within those rights of way:

29  
30           “Road grading and maintenance occur there, and other utilities locate in road  
31           rights-of-way. Even if particular roads within the SMPE corridor do not now host  
32           other utilities, many of them likely will in the future. The construction and  
33           maintenance of water, sewer, power, telecommunication, cable and other utilities  
34           subject natural gas pipelines to the very real possibility of third-party damage in  
35           crowded rights-of-way.” December 13, 2002 testimony of Bruce Paskett.

36  
37 NWN further explained its safety preference for locating outside road rights-of-way in its  
38 closing brief, as follows:

39  
40           “Further, with the increased use of the horizontal drilling installation method  
41           throughout the utility industry, including use for installing relatively small-  
42           diameter utility lines and cables, large pipelines within public rights-of-way are  
43           increasingly vulnerable to damage from boring for other utility installations.  
44           Where pipelines are located within rights-of-way near their edge, they are  
45           vulnerable to damage from augers installing power poles, highway sign poles,  
46           guardrails, and other equipment. Due to these safety and engineering concerns,

1 NW Natural prefers to site natural gas transmission pipelines in private easements  
2 adjacent to roadways, in locations where the roadway can be used for access and  
3 maintenance (thereby limiting impacts to private landowners). In such private  
4 easement locations, NW Natural can control utility installation and third-party  
5 access. Under these circumstances, the property owner is provided with good  
6 surface references to the pipeline's location, thereby avoiding inadvertent pipeline  
7 encounters through digging. \* \* \*

8  
9 “Indeed, both NW Natural and the OPUC have consistently maintained that road  
10 rights-of-way are generally not the safest places to put a high pressure  
11 transmission pipeline in significant part because the road rights-of-way are  
12 viewed as utility corridors. Public right-of-way is the first place utilities look  
13 when they locate new facilities. In fact, NW Natural uses road rights-of-way for  
14 most of its new distribution (not high pressure) system pipelines. The best way to  
15 protect a high-pressure natural gas transmission pipeline is to keep it separate  
16 from other facilities and their related construction and maintenance activity.  
17 According to both NW Natural's safety experts and the OPUC, a private easement  
18 provides the best protection for this type of pipeline at minimal impact to the  
19 existing farming practices.” NWN Closing Brief, at 16-17.

20  
21 Numerous parties challenged NWN's extensive reliance on safety as a basis upon which  
22 to site the pipeline on EFU land rather than in existing rights-of way, arguing that, in fact,  
23 damage from third-party dig-ins is also a distinct possibility in active farming areas.  
24 Because of its orientation toward “safety” over farm impacts, numerous parties also  
25 objected to substituting NWN's “Decision Making Protocol” for OOE's “Standard Land  
26 Use Condition.” They also argue that the Decision Making Protocol confers far too much  
27 discretion on NWN following the issuance of the site certificate, without any oversight or  
28 opportunity for public participation. Parties also argue that the Protocol does not  
29 adequately minimize or mitigate impacts to farmland and/or farm practices, as it favors  
30 (or allows) an alignment outside the road right-of-way when the right-of-way could be  
31 used to avoid or minimize impacts to farm practices.

32  
33 NWN's Decision Making Protocol clearly prioritizes safety consideration above impacts  
34 to farm practices, relying instead on the AIMP and PCCMP to minimize and mitigate  
35 agricultural impacts. However, the obligation in ORS 215.275 (5) to “minimize and  
36 mitigate” impacts is most effectively achieved by avoiding those impacts where possible,  
37 which in this case would generally require, as a first priority, that locating the pipeline  
38 within the road right-of-way is preferable to locating it on productive agricultural land.  
39 As discussed above, the Council agrees with NWN that the language of ORS 215.275(2)  
40 does not necessarily mandate that road right-of-way be used in all instances. However, at  
41 least where the applicant's proposed location for the use (in this case the 200-foot  
42 corridor) includes road right-of-way that could reasonably be used, and doing so would  
43 minimize or mitigate agricultural impacts, ORS 215.275(5) authorizes (if not requires)  
44 the Council to condition the site certificate approval to require that mitigation.

45

1 In its Closing Brief, and in response to the OPUC testimony concerning the  
2 particular safety risks of placing a large natural gas pipeline underneath pavement,  
3 the OOE recommended an additional modification to the Land Use Standard  
4 Condition 1. As revised, OOE recommended that the condition require as  
5 follows:

6  
7 “Where the proposed corridor includes existing public road or highway  
8 right-of-way (whether or not that right-of-way is improved) within an EFU  
9 district, the maintenance/operation easement shall be located so that the  
10 edge of the easement begins at the centerline of the paved surface of the  
11 road or highway (or, where the road or highway is not paved, at the  
12 centerline of the right-of-way). The maintenance/operation easement may  
13 not exceed 40 feet in width, but may extend beyond the existing public  
14 road or highway right-of-way to the extent that there is not 40 feet  
15 between the centerline and the edge of road or highway right-of-way.  
16 Where the maintenance/operation easement is within the public road or  
17 highway right-of-way, the construction easement area shall also begin at  
18 the centerline of the paved surface or, where there is no pavement, at the  
19 centerline of the right-of-way. Where the maintenance/operation  
20 easement is located to include public road or highway right-of-way, the  
21 construction easement shall also be located so that the edge of the  
22 easement begins at the centerline of the paved surface or, if there is no  
23 pavement, at the centerline of the right-of-way. The construction  
24 easement may not exceed 80 feet in width, but may extend beyond the  
25 existing public road or highway right-of-way to the extent that there is not  
26 80 feet between the centerline and the edge of the road or highway right-  
27 of-way. However, in no event may the construction easement extend  
28 more than 40 feet of land into an EFU zone outside public right-of-way  
29 without express site-specific authorization from OOE. These restrictions  
30 shall not apply to the facility where it is not located within an EFU zone.  
31 For purposes of this and other land use conditions, the term “easement”  
32 means both the area within an existing public road or highway right-of-  
33 way within which the operation and maintenance of the facility is allowed  
34 by a county or state permit or other similar governmental authorization,  
35 and an adjoining easement beyond the edge of the right-of-way. This  
36 condition shall not apply where site specific conditions allow placement  
37 outside the public road right-of-way at specific properties.”

38  
39 In addition, OOE succinctly evaluated the conflict between NWN’s safety priority, and  
40 the statutory priority to avoid agricultural impacts as follows:

41  
42 “NWN has argued throughout this proceeding that the Council may use its  
43 authority to condition a site certificate to protect public health and safety under  
44 ORS 469.401(2) to permit the placement of the pipeline outside of but along  
45 existing road right of way under ORS 215.275(2)(e). OOE agrees that this case  
46 presents a clear policy choice for the Council. The question is whether the threat

1 to public health and safety from putting the pipeline in the right-of-way has been  
2 shown to be sufficiently high to support a general finding that the corridor can be  
3 located outside the road right of way in EFU land. The OPUC submitted  
4 evidence showing that pipeline safety [in road rights-of-way] is a major concern  
5 that should be given primary consideration in siting the pipeline. \* \* \*

6  
7 “The issue must also be decided in light of Oregon’s strong statutory policy to  
8 protect farm land. \* \* \* Opponents have argued that the location of the pipeline in  
9 farm land may not be based on a general finding that it is safer to do so, that the  
10 pipeline must be located within the right-of-way, and, indeed, that the pipeline  
11 must be located under the paved surface of the road right-of-way to be a permitted  
12 use under ORS 215.283(1)(L). \* \* \* As noted above, this interpret[ation] is not  
13 required.

14  
15 “\* \* \* \* \*

16  
17 “Nevertheless, OOE recognizes that a gas pipeline is a utility facility that poses  
18 unique safety challenges. In addition, OOE recognizes that the issue of safety of  
19 the pipeline is not simply an issue of safe installation, but also an issue of safe  
20 operation into the future. \* \* \* OOE also recognizes that there is evidence in the  
21 record that third party dig-ins by competing utilities is a major cause of damage to  
22 the pipeline. \* \* \* However, there is also evidence that dig-ins can occur on farm  
23 land, as well. Thus, OOE offers the following additional condition related to use  
24 of the right-of-way:

25  
26 “Notwithstanding the prior condition [land use standard condition 1]  
27 where there are existing utility lines in the subsurface of that portion of a  
28 public road or highway right of way where the facility would otherwise be  
29 located, the permanent easement may extend onto private land adjacent to  
30 the public right of way, so long as the private easement on land outside the  
31 public right of way is adjacent to public right of way and does not exceed  
32 20 feet in width. In addition, to avoid future conflicts with utilities, where  
33 the public road is currently classified by the county or by the state as an  
34 arterial or collector road, the easements may be located so that they begin  
35 at and extend out from the edge of the right of way.”

36  
37 OOE Closing Brief at 7-8.

38  
39 OOE added this condition 1a to the revised proposed Land Use Standard Condition 1 as  
40 a means of addressing the safety conditions NWN identified relating to existing and  
41 future utilities competing for space in close proximity to the facility. At the same time,  
42 the Council appreciates that there must be a balance. Viewed in isolation, an increase in  
43 safety risk could be used as a justification to locate high pressure natural gas pipelines in  
44 EFU-zoned lands outside of existing rights-of-way in many, if not all, instances.  
45 However, the requirements of the Council’s standards to protect public health and safety  
46 under ORS 469.501, and its mandatory condition requirements under ORS 469.401(2)

1 must be harmonized with the mandate under 215.275(5) that impacts to agricultural land  
2 be minimized and mitigated. The following revisions to the Land Use General  
3 Conditions resolve NWN's objection that Condition 1 fails to allow for the potential need  
4 to add temporary workspace outside of existing rights-of-way. They also respond to the  
5 exceptions filed by NWN, which contained four major points: (a) that use of the  
6 centerline of the paved road would require use of more land in farm use; (b) that the  
7 conditions needed to account for conflicts with above-ground as well as subsurface  
8 utilities; (c) that the conditions need to address the portion of the site where the  
9 permanent easement will follow the existing SMF site; and (d) that the condition(s)  
10 should provide for OOE approval of site-specific exceptions to the general rules. The  
11 revised Land Use General Conditions now tie the location of the easements to the center  
12 of the road rights-of-way, they account for conflicts with above-ground utilities, a  
13 specific condition is added addressing the SMF right-of-way, and (in mandatory  
14 condition 7) provision is made for deviations from the general conditions, subject to clear  
15 standards that make it clear to potentially-affected parties now where the easements may  
16 vary from the general conditions.

17  
18 NWN also excepted to the split zone corridor condition, which generally requires that  
19 where the 200-foot corridor contains land in a non-EFU zone as well as land zoned EFU,  
20 that the easements be located on the non-EFU lands. The Council finds that this  
21 condition is required under ORS 215.275(2), as well as under ORS 215.275(5), at least in  
22 the absence of a specific showing as to why the EFU portion of the corridor must be used.  
23

24 Washington County filed an exception to OOE's proposed condition 1a, allowing the  
25 siting of the permanent and construction easements outside of existing road right-of-way  
26 along roads designated as collectors or arterials in order to avoid conflicts between the  
27 facility and other existing and future utilities. 1000 Friends of Oregon, Ellen McNeil,  
28 and the Farm Bureaus filed a similar exception to condition 1a. Washington County and  
29 1000 Friends also appeared at the hearing before the Council, and argued against  
30 allowing placement of the easements outside of existing rights-of-way based on the  
31 designation of the road type by the county or the state. The Council recognizes that there  
32 is conflicting evidence in the record concerning whether the designation of a road is a  
33 reliable indicator of current and future utility conflicts generally, and third party dig-ins  
34 in particular. Nevertheless, the Council finds that no party provided evidence that  
35 effectively rebutted the showing made by NWN and the Oregon PUC that there are  
36 significant public safety risks in placing a high-pressure natural gas pipeline within road  
37 rights-of-way that could be avoided by placing the pipeline just outside of that right-of-  
38 way. The Council has amended the General Land Use Conditions to place a cap on the  
39 amount of land outside of existing right-of-way that may be used for the facility. These  
40 limitations address the exceptions by significantly reducing the amount of land outside of  
41 road rights-of-way that may be utilized, while providing the bare minimum necessary for  
42 the facility to avoid undue risk to public safety.

43  
44 The Farm Bureaus filed an exception asserting that the land use standard condition "\* \* \*  
45 is not supported by a preponderance of evidence in the record that it [the condition] will  
46 contribute to the safety of the pipeline, and therefore [it], should be eliminated." Farm

1 Bureaus' Exceptions, at 2. The Council notes that there is evidence in the record from  
2 both NWN and the Oregon PUC to the effect that placement of the facility outside of the  
3 existing road right-of-way is the most preferable as a means of lessening the risk of a 3rd-  
4 party dig-in, and the Council specifically finds that there is a preponderance of evidence  
5 in the record as a whole on this issue. The Farm Bureau also argued that because the  
6 pipeline passes under the roadway many times along its route, the Council may not rely  
7 on the safety risks of placing the pipeline under the roadway or within the road right-of-  
8 way as a basis for allowing placement outside of right-of-way. The Farm Bureau's  
9 argument ignores the fact that NWN has shown that it is necessary to cross from one side  
10 of a road to another in many locations along the site of the facility in order to avoid EFU-  
11 zoned land, to avoid impacts to farm practices, and to avoid other effects controlled by  
12 Council standards. The fact that it is necessary to place the facility underneath or within  
13 road rights-of-way in some instances does not demonstrate that the facility must be  
14 located underneath or within roads in all cases.

15  
16 Finally, the Council has limited the extent to which the facility may extend outside of  
17 existing road right-of-way to the bare minimum necessary for the construction, operation  
18 and maintenance of the facility. Although the General Land Use Conditions continue to  
19 categorize the restrictions on use of land outside of existing road rights-of-way according  
20 to the designation of the road, for both local roads and for collectors and arterials, both of  
21 the conditions effectively restrict the amount of land outside of existing right-of-way to  
22 20 feet in most circumstances. The Council finds that the General Land Use Conditions  
23 represent a reasonable harmonizing of the obligations to provide safe utility service  
24 (including under ORS 469.401(2)), and the requirements of ORS 215.275(5).

25  
26 At its final meeting of March 13, 2003, the Council reviewed revised language for the  
27 Land Use General Conditions. The Council adopts the March 13, 2003 revision of the  
28 Land Use General Conditions as a means to recognize both the safety and the agricultural  
29 concerns inherent in this siting process. The Council does not adopt NWN's Decision  
30 Making Protocol as a generally applicable condition. However, as the OOE has  
31 recognized, NWN's application of its protocol to specific properties along the proposed  
32 corridor substantiates the bases for certain specific proposed alignments. Those  
33 alignments are discussed below.

34  
35 d. Land Use Conditions 2 and 3

36  
37 NWN also objects to OOE's proposed Land Use Standard Conditions 2 and 3. As  
38 proposed, those conditions state:

- 39  
40 (2) Where the corridor includes lands on both sides of a public road, and those  
41 lands are zoned EFU only on one side of the road, NWN shall locate the  
42 facility on the side of the road that is not zoned EFU except where NWN  
43 demonstrates that it would be necessary to remove or displace a building to  
44 stay on the non-EFU side. This condition may be relaxed if using the non-  
45 EFU side would unavoidably result in the pipeline being less than 40 feet  
46 form a building used for human occupancy.



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(3) If the construction or permanent easement in road right-of-way would affect Category 1 or Category 2 habitat as described in section IV.7 of this order, the construction or permanent easement may be sited on land in the EFU zone that is not within existing road right of way, but only to the extent necessary to avoid Category 1 or 2 habitat. In such cases, the easement shall be located so as to mitigate and minimize the impacts of the facility on farm practices on surrounding lands. This permission shall not apply if the habitat will be avoided through HDD or other boring technique. EFU land that is not in public road right of way shall not be used to avoid habitat of category 3 or lower.

NWN’s objection to Condition 2 asserts that this condition “assumes that zoning is the only consideration in pipeline placement. In fact, in a number of these cases, pipeline location should be driven by considerations including the presence of other utilities or existing structure on the non-EFU side, slopes, technical and engineering feasibility, proximity to dwellings, the structural integrity of the road and other safety factors.” NWN Closing Brief at 31.

Notwithstanding NWN’s argument, these “split-zone” situations in which NWN has located its preferred corridor, are the result of NWN’s determination to include those properties in that corridor. As discussed with regard to the alternatives analysis mandated by ORS 215.275(2), NWN’s own evaluation process started with a determination of whether routes over urban land were available. NWN’s determination to include urban lands within the preferred corridor indicates that NWN determined that those urban lands were available. ORS 215.275(2) permits siting on EFU land only when the determination has been made that urban or non-resource land is not available. To the extent that NWN has chosen routes over urban land, it has made the determination that those specific urban or non-resource lands are available and, therefore (under the statute), the pipeline location in those areas is not permitted on the EFU land. Condition 2 is consistent with, if not mandated by, the express language of ORS 215.275(2). The Council retains Land Use Standard Condition 2.

NWN’s objection to Condition 3 is the same its objection to Condition 1, discussed above, that it is “entirely unworkable as [it] permit[s] no additional temporary workspace outside of existing rights-of-way.” NWN Closing Brief at 29. As with Condition 1, this “unworkable” situation is resolved by revising Condition 3 to accommodate “additional temporary workspace” under certain clear and objective conditions. The Council approves condition 3 as modified below. At the final hearing on the proposed facility, no parties objected to this condition as modified.

d. Site Specific Land Use Issues

i. Site Specific Representations

1 With regard to some portions of the proposed corridor, NWN has done site specific  
2 studies to refine its preferred alignment to a particular location within the corridor. It has  
3 also made some site-specific representations that the Council determines should be  
4 included as conditions pursuant to OAR 345-27-0020(10).

5  
6 Milne, Leisy and Pleasant Valley Roads.  
7

8 NWN has represented that it will locate the pipeline within the road right-of-way along  
9 Milne, Leisy and Pleasant Valley Road. The Council adopts a condition of approval to  
10 restrict the location of the facility in a manner consistent with NWN's representations,  
11 pursuant to OAR 345-27-0020(10). The Hearing Officer recommended a condition that  
12 simply restricted the location of the facility along these roads to within the road right-of-  
13 way. NWN filed an exception to that condition, seeking to have the land use standard  
14 conditions for local roads govern the location and width of the construction and  
15 permanent easements. Further, the Farm Bureau asked that Davis road (an unimproved  
16 road) be added. Following argument at the hearing before the Council, the Council  
17 determined to modify the condition to provide as follows:  
18

19 NWN shall locate the SMPE within the road right-of-way along Davis, Milne, Leisy and  
20 Pleasant Valley Roads. The maintenance/operation easements for these portions of the  
21 site shall be within the existing road rights-of-way. The width and location of the  
22 construction easement for these portions of the site shall be governed by General Land  
23 Use Condition 5 (requiring that the easement be no more than 80 feet in width, beginning  
24 at the centerline of the road right-of-way).  
25

26 Highway 219 (at Simpson property); River Road (at Roshak property); Scholls Ferry  
27 Road (at Flint, Stobbe and Anderson-Schach properties); Elwert Road (Buschling  
28 property); and Barlow Road (Paradis, Cooper and Cook properties)  
29

30 In response to direct testimony, NWN has done site-specific analyses of these segments  
31 of the proposed corridor. In these segments, NWN will follow the Standard Land Use  
32 Condition 1. In addition, NWN has made a representation that it will avoid a specific  
33 chestnut tree on the Flint property, which the Council adopts as a binding commitment  
34 under OAR 345-27-0020(10). Therefore, the Council adopts the following condition:  
35

36 “On the Flint property, along Scholls Ferry Road, NWN shall locate the pipeline  
37 so as to avoid any disruption to the 100 year old chestnut tree that is being  
38 registered as a Heritage Tree.  
39

40 Panels 24 through 26 depict both a “preferred” and “alternate” route for the Corridor.  
41 Through an agreement for informal disposition of issues in this case, NWN has  
42 determined not to consider use of the alternate corridor, which would have located the  
43 corridor along Sherwood Road, Stark Road, Lebeau, Eastview, and Kruger Road. No  
44 party challenges that determination. Therefore, the Council imposes the following  
45 condition, which serves to commit NWN to the Preferred Route in that location:  
46

1 NWN shall not use the Alternate Corridor Segment (along Sherwood  
2 Road, Stark Road, LeBeau, Eastview, and Kruger Road) as shown on  
3 panels 24 through 26 of Exhibit K-2 of the ASC. The other proposed  
4 alignments for the Corridor in this segment of the facility are not affected  
5 by this condition and are available for use, subject to compliance with all  
6 other applicable conditions.

7  
8 ii. Other Site Specific Issues  
9

10 Additional issues have been raised during the contested case regarding the factual or legal  
11 basis for locating the corridor at several specific locations along the Preferred Route. In  
12 some instances, those issues are more site-specific applications of general issues  
13 previously addressed in this Order and in the Proposed Order. In other instances, these  
14 issues were not developed with any additional factual or legal substantiation to warrant  
15 any re-evaluation of how they were addressed in the Proposed Order. For those site-  
16 specific issues that were raised and that are not further addressed in this Order, the  
17 Council adopts the findings, reasoning and conclusions of the Proposed Order with  
18 regard to those issues.

19  
20 Burkhalter Road  
21

22 Burkhalter Road, between Highway 219 and approximately Rood Bridge Road (Panel  
23 17), is not within a location proposed by the applicant. Instead, in that area, the proposed  
24 site crosses EFU land, generally along the rear boundaries of properties. Several property  
25 owners along Burkhalter Road, and along the proposed corridor urge that the corridor be  
26 relocated to Burkhalter Road. OOE, in the Proposed Order, evaluated Burkhalter Road  
27 and the proposed corridor in this portion of the route, and recommended approval of the  
28 proposed route. NWN also evaluated Burkhalter Road, although not in as much detail as  
29 the route it has proposed in this area.

30  
31 NWN summarized the issues involved in using Burkhalter Road as the location of the  
32 proposed facility in this portion of the route in its Closing Brief, as follows:  
33

34 “The location of the Preferred Corridor near the intersection of Highway 219 and  
35 Burkhalter Road is one of the most controversial portions of the SMPE, and also  
36 posed some of the most challenging decision for NW Natural in its corridor  
37 analysis, conducted under ORS 215.275(2). The crux of the controversy is that,  
38 for this relatively short roadway segment, NW Natural has proposed the Preferred  
39 Corridor away from the Burkhalter Road public right-of-way, and in an  
40 agricultural area along property lines to the south of Burkhalter Road. NW  
41 Natural emphasizes that the decision to propose the Preferred Corridor in this  
42 location was part of its corridor selection process. Consequently, Burkhalter Road  
43 is not within the 200-foot Preferred Corridor, and therefore is not part of the  
44 Application for Site Certificate.  
45

1 “In his cross-examination testimony, Mr. Ron Gullberg described the challenges  
2 involved in selecting the Preferred Corridor in this location. \* \* \* In this location,  
3 the Preferred Corridor moves south after crossing through Hillsboro, running  
4 along Highway 219 (Hillsboro Road). \* \* \* In determining locations for the  
5 Preferred Corridor, it is essential to understand decisions, objectives, and  
6 constraints both north and south of a particular corridor segment or location. For  
7 the Burkhalter Road location, this can be seen on Figure K-1 -- as the Preferred  
8 Corridor heads south, it must begin turning east, both in order to meet its ultimate  
9 destination (the Molalla Gate Station), and in the more immediate need to  
10 intersect with a satisfactory HDD bore location to cross the Tualatin River. \* \* \*

11  
12 “As Mr. Gullberg described, and as can be seen on Figure K-2, Panel 17, a limited  
13 number of choices are available to begin turning the Preferred Corridor toward the  
14 east in order to satisfy these objectives further to the south. Choices available to  
15 NW Natural included: (1) Burkhalter Road; (2) continuing south along Highway  
16 219 (placing the pipeline either in close proximity to residences or in close  
17 proximity to a school) or; (3) the proposed Preferred Corridor location crossing  
18 over agricultural properties south of Burkhalter Road.

19  
20 “As Mr. Gullberg described in his cross-examination testimony, the immediate  
21 problem with locating the pipeline on Burkhalter[sic] Road exists at the  
22 intersection between Highway 219 and Burkhalter Road, running east to the  
23 intersection at Minter Bridge Road. \* \* \*

24  
25 “As depicted on Figure K-2, Panel 17, and as described in the written and  
26 testimonial evidence, on the north side of Burkhalter Road is an open-water  
27 wetland – a sensitive habitat area. \* \* \* On the south, an earthen man-made dam  
28 retains a 27-acre irrigation pond. \* \* \* Burkhalter[sic] Road in this location and  
29 for a distance of approximately 900 feet, is elevated above these water features  
30 and dams (i.e. sits upon an artificial plateau), and is built entirely on fill. In other  
31 words, to begin placing the pipeline along Burkhalter[sic] Road would require  
32 locating it in a wetland or through an irrigation pond, or digging out a narrow  
33 elevated roadway segment, placing the pipeline within an elevated roadway  
34 segment, entirely within fill. As Mr. Gullberg described in his cross-examination  
35 testimony, this factor alone, though compelling, was not the only factor  
36 considered.

37  
38 “Field observations show substantial evidence of a shallow-surface bedrock,  
39 rendering construction in the overall location difficult, and potentially further  
40 impacting prorate Owens by blasting operations. Moreover, as Burkhalter[sic]  
41 Road heads south and east, there is a significant orchard on the Beglinger property  
42 on the south side, with evidence of shallow bedrock on the north side of the  
43 roadway. \* \* \* East of the Beglinger property are properties owned by the Greens,  
44 the Moores, Williams/Buck, and the Manns, all having peach orchards along their  
45 property frontage and immediately adjacent to the road right-of-way. Due to the  
46 narrow dimensions of the Burkhalter Road right-of-way and the location of these

1 properties, NW Natural estimated that over three acres of peach orchards would  
2 be removed to enable construction. \* \* \* A cemetery is situated immediately  
3 north of the Moore and William/Buck properties, rendering pipeline installation  
4 north of the road impracticable. \* \* \*

5  
6 “Terri Mann in her December 16, 2002 letter and during cross-examination of Mr.  
7 Gullberg focused heavily on impacts to a limited number of peach trees on the  
8 easterly boundary of her property [within the Preferred Corridor]. She failed,  
9 however, to recognize the very significant impact of construction along the north  
10 side of her property, which would be required in order to place the pipeline either  
11 within or alongside Burkhalter Road in this location (i.e. the temporary removal  
12 of some peach trees, and the permanent removal of others over the pipe.) The  
13 significance of these agricultural impacts (on the Beglinger properties, moving  
14 east through the Mann property) persuaded NW Natural that the Burkhalter Road  
15 location would exact a heavy temporary and permanent toll on agricultural  
16 operations in this location, not to mention the technical and environmental issues  
17 involved in this potential corridor location. Moreover, Burkhalter[sic] is designed  
18 by the County as a “Collector” road, with consequential long-term growth and  
19 development exposure, as well as traffic safety concerns during construction \* \* \*

20  
21 “In contrast, NW Natural firmly believes that the chosen Preferred Corridor  
22 location will have minimal impacts running along the Tankersley Farms property  
23 line, heading east to the southerly portion of the Green, Moore, William/Buck,  
24 and Mann properties. These properties are not planted with orchard crops, and  
25 the pipeline can be situated along property lines thereby avoiding the worst  
26 impacts inherent in siting the pipeline to the north, the south or within Burkhalter  
27 Road.

28  
29 “As Mr. Gullberg testified during cross-examination, it is not just one factor  
30 which convinced NW Natural that Burkhalter Road is a poor location for a high-  
31 pressure natural gas transmission line. The decision is based upon environmental  
32 factors, safety issues, geotechnical considerations, and agricultural impacts which  
33 are abundantly clear from an examination of Figure K-2, Panel 17. \* \* \* It does  
34 not accomplish the objectives of preserving farmland, nor can agricultural impacts  
35 be sufficiently minimized and mitigated under ORS 215. 275(5) by the right-of-  
36 way location.” NWN Closing Brief, page 25-27.

37  
38 Several parties, primarily residents and farmers who live along Burkhalter Road as well  
39 as along the Preferred Corridor, challenged specific factual evidence cited by NWN as a  
40 basis for rejecting Burkhalter Road. Many cited specific locations along Burkhalter Road  
41 that could accommodate the pipeline, though no comprehensive evaluation of whether the  
42 entire portion of that road was a feasible alternative location was presented. However,  
43 the issue here is not whether Burkhalter Road should have been considered as an  
44 alternative route under ORS 215.275(2), or even whether, with sufficient mitigation, it  
45 could have been an alternative. Like the Preferred Corridor, Burkhalter Road is within  
46 the EFU district. The existence of the road right of way along Burkhalter Road does not

1 (by itself) compel a conclusion that the road, rather than another EFU location, must be  
2 used. Rather, once a decision was made that the route must go across EFU land in this  
3 area, NWN and the Council may properly consider which EFU route would satisfy the  
4 statutory requirement to minimize farm impacts and safety risks, comply with other  
5 environmental requirements, and provide the most feasible from a geotechnical  
6 perspective. No party has established a statutory or regulatory basis to deny the Preferred  
7 location. To the contrary, while no balancing exercise is statutorily required, NWN has  
8 established that from a mitigation and minimization of farm impacts perspective, an  
9 alignment within the Preferred Corridor can more effectively minimize and mitigate  
10 permanent agricultural impacts than would an alignment along Burkhalter Road. Based  
11 on the evidence in the record and the argument of the parties in the contested case and in  
12 their respective exceptions, the Council finds that there is a preponderance of evidence  
13 that: (a) the applicant and OOE both considered Burkhalter Road as an alternative  
14 location; and (b) that locating this portion of the proposed facility as proposed by NWN  
15 will minimize and mitigate impacts to farm practices and the cost of farm practices on  
16 surrounding lands.

#### 17 18 East Brookman Road

19  
20 Along Brookman Road, the Preferred Corridor is on EFU land to the south of the road,  
21 and a mixture of AF-5, AF-10 and AF2- zoned land to the north. As discussed above,  
22 Land Use Condition 2 requires that in “split zones” such as this, the pipeline must be  
23 placed on the non-EFU land, subject to some exceptions. NWN submitted testimony that  
24 the north side of Brookman Road (the non-EFU side) must be avoided because it contains  
25 forest and wetlands. The maps and tables in the application indicate that the habitat to  
26 the north of Brookman Road is category 3, and the applicant’s wetland maps show some  
27 delineated wetlands. As provided in Land Use Condition 3, habitat categories 3 or lower  
28 may be used with proper mitigation. As OOE points out, there is no evidence that NWN  
29 has applied for a federal wetlands permit or have been informed that such a permit would  
30 not be attainable. Thus, NWN has not established at this point that the non-EFU side of  
31 Brookman Road is not available. OOE recommends, and the Council adopts, the  
32 following condition to determine the pipeline location for Brookman Road:

- 33  
34 “In the corridor along Brookman Road, NWN shall locate the pipeline either  
35 within road right of way or in exception lands to the north of the road, unless  
36 (a) NWN submits evidence to the Council that it has attempted to obtain the  
37 necessary wetlands permits from DSL and the US Army Corps of Engineers  
38 and cannot obtain one; or  
39 (b) NWN obtains concurrence from OOE that the category 3 habitat cannot  
40 feasibly be mitigated consistent with the ODFW Habitat Mitigation Goals as  
41 required by OAR 345-022-0060.  
42

43 If NWN establishes that the pipeline cannot be sited on the north side of Brookman Road  
44 for one of those two reasons, the Land Use Standard Condition would provide a basis to  
45 locate the pipeline adjacent to the south side of the road right of way, since there is a

1 preponderance of evidence in the record that Brookman Road is likely to be improved  
2 and developed.

3  
4 Dryland, Zimmerman and Heinz Road

5  
6 Along Dryland, Zimmerman and Heinz Road, NWN has proposed both a Preferred and  
7 an Alternate Corridor. The Alternate Corridor extends along the road rights-of-way, and  
8 the Preferred Corridor extends along back property lines in this area. The Proposed  
9 Order recommends approval of the alternate route, on the basis that NWN had not shown  
10 why the route along the roads was unsuitable.

11  
12 Numerous farmers along these three roads have urged that the Preferred, rather than the  
13 Alternate, corridor be approved. The overwhelming basis of their argument is that  
14 location along the back property lines of these farms would have much less impact on  
15 agricultural operations than would a location along the road rights of ways. In general,  
16 farmers in this area site to narrow rights of way along these roads, short setbacks for  
17 homes, and encroaching farm infrastructure that is already in or adjacent to the road right  
18 of way. NWN further described the farming impacts along the alternate, road corridor, as  
19 follows:

20  
21 “There are significant concentrations of intensive, high value agricultural  
22 activities located along Heinz, Zimmerman, and Dryland Roads as well as  
23 specific limiting conditions. Using either the public right-of-way or the adjacent  
24 land would create significant impacts to the agricultural practices in these areas. If  
25 the pipeline route followed the public right-of-way in these areas, the impacts to  
26 farming practices would be greater compared to the route along the NW Natural  
27 preferred corridor \* \* \*.

28  
29 “Many properties along these roads produce relatively high value crops including  
30 nurseries, orchards, direct-market farms, and a seed research farm. If the Heinz,  
31 Zimmerman or Dryland Road alternate routes were utilized, agricultural activities  
32 would be negatively impacted due to temporary, but perhaps extended interrupted  
33 access for farmers and the public to on-farm direct marketing activities.

34 “Numerous agriculture-related buildings such as shade houses and greenhouses,  
35 as well as residences, are located close to the public right-of-way along Heinz,  
36 Zimmerman and Dryland Roads, making the use of significant portions of the  
37 lands adjacent to the public right-of-way impractical for pipeline construction.  
38 The public right-of-way is relatively narrow along these roads, further limiting the  
39 available workspace. Along Heinz and Zimmerman Roads, unusually deep road  
40 ditches flank the road and these ditches provide outlets for the drain tile systems  
41 in the adjacent fields. Because of the limitations described above, the ditches  
42 would probably need to be temporarily filled and graded to provide workspace for  
43 construction. Filling these ditches would block the outlets for the drainage  
44 systems from the adjacent fields, thereby resulting in wet areas that could  
45 interfere with field activities and reduce crop yields. And because of the  
46 limitations described above, construction work around buried irrigation mainlines

1 in or near the public right of way along these specific roads would result in  
2 significant periods of interrupted flow of irrigation water that could damage crops.  
3 Many adjacent farms rely on uninterrupted irrigation to supply moisture to the  
4 intensively managed crops.” NWN Closing Brief, at 14.

5  
6 The evidence in the record indicates that locating the pipeline along the Preferred Route  
7 along these roads would minimize and mitigate impacts to farm practices and the cost of  
8 farm practices to a much greater degree than could be achieved along the alternate road  
9 right-of-way route. Therefore, consistent with ORS 215.275(5), the Council approves the  
10 Preferred Corridor for this section of the SMPE, and requires that NWN use it as the  
11 location for the proposed facility for this portion of the route.

12  
13 Conclusions

14  
15 Based on the foregoing findings of fact, reasoning, and conclusions, the Council  
16 concludes that the facility, as conditioned by the site certificate, complies with ORS  
17 469.504(1)(b) and OAR 345-022-0030, including those land use statutes directly  
18 applicable to the facility.

19  
20 **5. OAR 345-022-0040**  
21 **Protected Areas**

22  
23 The Proposed Order’s evaluation of the ASC for compliance with this standard  
24 establishes that, subject to one condition, the ASC satisfies this standard. That standard  
25 requires:

26  
27 “During construction of the pipeline Willamette River crossing, NWN shall  
28 protect riparian areas on both sides of the river by locating all bore holes for  
29 directional drilling at least 1,300 feet from the river’s edge.”

30  
31 NWN requests a modification to that condition, requesting that that 1,300 foot setback  
32 from the river’s edge for bore holes be deleted and replaced with a requirement that the  
33 bore holes must be at least “200 feet from the river’s edge on the north side of the river,  
34 and 400 feet from the edge on the south side of the river.” NWN explains this requested  
35 modification by stating:

36  
37 At one time, NW Natural anticipated that the bore holes would be 1,300 feet from  
38 he edge of the river. Since then, however, the filbert trees on the north side of the  
39 river have been cleared, leaving only a 200-foot wide riparian area to protect, and  
40 additional design work has narrowed the length of the proposed bore.

41  
42 Significantly, a 1,300-foot setback is not necessary to protect either the  
43 Willamette River Greenway or riparian habitat. The Greenway extends only 150  
44 feet from the ordinary low-water line of the river. \* \* \* The riparian area extends  
45 only 400 feet on the river’s south side and 200 feet on the north side.

46 Accordingly, even though the length of the bore will be much longer, the legal



1 setbacks from the river should be limited to 200 feet on the north side and 400  
2 feet on the south side.

3  
4 NWN Closing Brief, Attachment 3.

5  
6 No party filed exceptions to the Recommended Order on the standard. The Council finds  
7 that this standard can be satisfied with the condition as modified, and adopts the Proposed  
8 Order's findings, reasoning and conclusions of compliance with the Protected Areas  
9 standard, subject to compliance with Condition 1, as modified.

10  
11 **5. OAR 345-022-0050**  
12 **Retirement and Financial Assurance**

13  
14 The Proposed Order fully evaluates the proposed facility for compliance with this  
15 standard, and concludes that the ASC satisfies this standard. No party makes a credible  
16 challenge to these findings. No party filed exceptions to the Recommended Order on this  
17 standard. The Council adopts the Proposed Order's findings, reasoning and conclusion,  
18 and finds that the applicant has established compliance with this standard.

19  
20 **6. OAR 345-022-0060**  
21 **Fish and Wildlife Habitat**

22  
23 The Proposed Order thoroughly examines the ASC for compliance with this standard,  
24 concluding that, subject to numerous conditions, the ASC satisfies this standard.  
25 (Proposed Order, pages 35-52.) During the course of the contested case, NWN objected  
26 to the language of several of these standards, and provided expert testimony challenging  
27 the relationship of certain conditions to the finding of compliance with this standard.  
28 Based upon this testimony, and after further analysis, OOE provided additional testimony  
29 on January 3, 2003, in which it proposed amended language for the conditions challenged  
30 by NWN. With regard to one condition, number 66, NWN recommended that the  
31 condition be eliminated. OOE disagreed with that recommendation on the basis that  
32 eliminating the condition would leave the site certificate without a condition to govern  
33 Fish and Wildlife Habitat standard compliance during operation of the facility. Instead,  
34 OOE submitted revised language that modifies the notice requirement for repairs  
35 undertaken during operation. NWN has not subsequently objected to the proposed  
36 revision to that condition. No other party has challenged the conditions, as amended, in  
37 terms of compliance with this standard. Although no party filed exceptions objecting to  
38 the adoption of OOE's proposed amendments to the conditions, both OOE and NWN  
39 filed requests for clarification of these conditions because in some cases the conditions  
40 listed in section V of the Recommended Order did not conform the language proposed by  
41 OOE. The Council adopts the amended language as proposed by OOE in its entirety.  
42 The Council adopts the Proposed Order's findings, reasoning and conclusions, as  
43 supplemented by OOE's January 3, 2003 testimony, and the Fish and Wildlife conditions,  
44 as amended, and finds that, subject to compliance with these conditions, the proposed  
45 ASC satisfies the Fish and Wildlife Habitat standard.

46

1                   **7. OAR 345-022-0070**  
2                   **Threatened and Endangered Species**

3  
4                   OOE’s discussion and evaluation of compliance with this standard concludes that, subject  
5                   to one condition, the ASC satisfies this standard. That condition required, generally, that  
6                   “NWN shall avoid removing medium and large trees in upland areas.” NWN challenged  
7                   the need for this condition, arguing that it is ambiguous and more restrictive on NWN  
8                   than it would be on landowners granting NWN easements. After further analysis, OOE  
9                   has agreed that the standard can be met without that condition. No party filed exceptions  
10                  to the Recommended Order on this standard. The Council adopts the findings, reasoning  
11                  and conclusions of the Proposed Order, with the elimination of Condition 1, in finding  
12                  that the ASC satisfies the Threatened and Endangered Species standard.

13  
14                  **8. OAR 345-022-0080**  
15                  **Scenic and Aesthetic Values**

16  
17                  The Proposed Order evaluates the ASC for compliance with this section and concludes  
18                  that the ASC satisfies this standard. No party makes a credible challenge to the Proposed  
19                  Order’s discussions and conclusions. No party filed exceptions to the Recommended  
20                  Order on this standard. The Council adopts the Proposed Order’s findings, reasoning and  
21                  conclusions in finding compliance with this standard.

22  
23                  **9. OAR 345-022-0090**  
24                  **Historic, Cultural and Archeological Resources**

25  
26                  The Proposed Order discusses in detail the requirements of this standard and the ASC’s  
27                  compliance with it. The Proposed Order concludes that the ASC can satisfy this  
28                  standard, subject to conditions requiring complete site evaluation after the final route  
29                  alignment is determined.

30  
31                  During the contested case process, assertions were made in the record that there are  
32                  archeological artifacts on properties to which NWN was denied survey access, but are  
33                  within the proposed corridor. In response to those assertions, NWN made the  
34                  representation that it would “engage an archeological inspector to look for and analyze  
35                  artifacts and [NWN] will comply with state laws with respect to these resources.” The  
36                  The Council adopts this representation as a commitment for purposes of OAR 345-027-  
37                  0020(10), as well as a condition to ensure compliance with this standard. No party filed  
38                  exceptions to the Recommended Order on this standard.

39  
40                  Subject to compliance with this additional condition and the conditions in the Proposed  
41                  Order, the Council adopts the Proposed Order’s findings, reasoning and conclusions and  
42                  finds compliance with the Historic, Cultural and Archaeological Resources standard.

43  
44                  **10. OAR 345-022-0100**  
45                  **Recreation**

1 The Proposed Order evaluates the ASC for compliance with this standard, and concludes  
2 that the proposed SMPE satisfies this standard, subject to a condition that “Construction  
3 on Brookman Road shall be halted after 5:45 PM if construction noise is audible from  
4 Stella Olsen Park.” NWN objects to this condition, arguing that it is “subjective” and  
5 that “it is unclear how this condition would be implemented and the condition is probably  
6 unnecessary given the distance between Brookman Road and the park.” Neither the OOE  
7 nor any other party responded to this objection, either during the contested case or with  
8 exceptions. Based on the requirements of this standard, and the OOE’s evaluation, the  
9 Council finds that the condition is unnecessary and would be factually difficult to  
10 evaluate and implement. Except as specifically stated here, the Council adopts the  
11 Proposed Order’s findings, reasoning and conclusions, and finds that the ASC satisfies  
12 the Recreation standard without the proposed condition.

13  
14 **11. OAR 345-022-0110**  
15 **Public Services**

16  
17 This standard requires that the Council find that the “construction and operation of the  
18 facility, taking into account mitigation, is not likely to result in significant adverse impact  
19 to the ability of communities within the study area to provide the following governmental  
20 services: sewers and sewage treatment, water, stormwater drainage, solid waste  
21 management, housing, traffic safety, police and fire protection, health care and schools.”  
22 The Proposed Order recommends that the Council find that the ASC complies with this  
23 standard, subject to compliance with several conditions.

24  
25 Greg Brown challenges the ASC’s compliance, and raises several issues relevant to this  
26 standard, including whether emergencies, and in particular medical transport, would be  
27 able to reach the north end of Dairy Creek Road during construction; whether NWN and  
28 its contractors can be relied on to comply with permit conditions relating to road closures;  
29 and whether construction would create school transportation problems due to traffic  
30 delays. Mr. Brown recommends several conditions to address these potential problems.

31  
32 For the most part, the issues Mr. Brown raises are addressed in the conditions already  
33 included in the Proposed Order. The Council will not add conditions that would overlap  
34 or duplicate those proposed conditions. However, Mr. Brown raised a concern that not  
35 all emergency transportation from the north of Dairy Creek Valley is provided by  
36 ambulance or fire department vehicles, but rather is often provided by private vehicles  
37 that meet ambulances somewhere south of Corey Road. The condition as originally  
38 proposed, which requires that ambulances, fire trucks and police be afforded immediate  
39 passage, does not adequately address situations where the emergency transportation is  
40 provided by a private vehicle. Therefore, the Recommended Order adopted OOE’s  
41 proposed revisions to Public Services condition 1, as follows:

42  
43 Ambulances, fire trucks, police and, in the Dairy Creek Valley area, private  
44 vehicles providing emergency transportation, shall be afforded immediate  
45 passage.  
46

1 Mr. Brown filed exceptions to the Recommended Order on this issue. He argued that the  
2 Council should require a NWN representative to be at the Construction site at all times  
3 during construction in Dairy Creek Valley, to ensure that roads would be opened for  
4 emergency vehicles. Mr. Brown also appeared at the Council's meeting on March 5,  
5 2003 and presented oral argument on the issue to the Council. NWN opposed adding  
6 additional language to that of the Recommended Order. During colloquy among the  
7 Council, Mr. Brown and NWN during oral argument, the following additional language  
8 for Public Services standard condition 1 was agreed to by Mr. Brown and NWN:

9  
10 NWN will assure that a company representative is present on Dairy Creek Road  
11 during periods of complete closure of Dairy Creek Road.

12  
13 The Council adopts the revision of Public Services Standard condition 1 to include the  
14 additional language above. Subject to this revised condition, the Council adopts the  
15 Proposed Order findings, reasoning and conclusions, and finds that the ASC satisfies the  
16 Public Services standard.

17  
18 **12. OAR 345-022-0120**  
19 **Waste Minimization**

20  
21 The Proposed Order evaluates the ASC for compliance with this section and concludes  
22 that the ASC satisfies this standard. No party makes a credible challenge to the Proposed  
23 Order's discussions and conclusions. No exceptions to the Recommended Order were  
24 filed relating to this standard. The Council adopts the Proposed Order findings, reasoning  
25 and conclusions in finding compliance with the Waste Minimization standard.

26  
27 **B. Compliance with EFSC Need for Facility Standard, OAR Chapter 345, Division**  
28 **23**

29  
30 As explained in the Proposed Order, the applicant has proposed to demonstrate Need for  
31 the Facility under the Least Cost Plan Rule, OAR 345-023-0020. To demonstrate  
32 compliance with this standard, the applicant submitted with its application its OPUC  
33 acknowledged Integrated Resource Plan (IRP). As fully discussed in the Proposed Order,  
34 and based on the acknowledged IRP, the applicant has satisfied this standard. As the  
35 Proposed Order acknowledges, during the course of this process, parties have generally  
36 challenged the need for the proposed facility. (See comments regarding the need for the  
37 pipeline, Proposed Order 132.) However, during this Contested Case, no challenge has  
38 specifically provided any evidence to establish how the Need standard has not been  
39 satisfied. No exceptions to the Recommended Order were filed on this issue. The  
40 Council adopts the findings, reasoning and conclusions of the Proposed Order, and finds  
41 that there is a preponderance of evidence in the record to establish compliance with the  
42 Need for Facility standard.

43  
44 **C. Compliance with Public Health and Safety Requirements**  
45

1 As explained in the Proposed Order, the Council does not have a specific standard related  
2 to public health and safety. However, ORS 469.501(1)(g) requires the Council to adopt  
3 standards for the siting of facility that address the “protection of public health and  
4 safety.” In addition, ORS 469.401(2) requires that the site certificate contain, in part,  
5 conditions “for protection of the public health and safety.”  
6

7 The requirement of ORS 469.501(1)(g) is not a siting requirement or a standard for which  
8 compliance must be established during this proceeding. Rather, it requires the Council to  
9 adopt standards to implement public and safety requirements. Thus, to the extent  
10 arguments may be based on that statute, as opposed to the siting standards that have been  
11 adopted to implement it, there is no statutory basis for those arguments. However, ORS  
12 469.401(2) does independently require that the site certificate contain conditions “for the  
13 protection of the public health and safety.” Therefore, while independent issues of  
14 public health and safety provide no basis to find that the ASC does not satisfy a siting  
15 standard or statutory requirement, proposed conditions to address health and safety are  
16 properly considered.  
17

18 The safety of the proposed facility was challenged at length with regard to compliance  
19 with the land use standard, and numerous parties challenged generally the safety of  
20 natural gas pipeline facilities. As they relate to the land use standard, the safety issues are  
21 addressed above. With regard to the safety of the facility in general, there is extensive  
22 documentation in the record to demonstrate how the SMPE will comply with or exceed  
23 all federal safety regulations. In addition, the record is replete with documentation from  
24 NWN’s safety experts to establish, by at least a preponderance of evidence, that NWN’s  
25 attention to safety details satisfactorily addresses public health and safety. The  
26 conditions recommended in the Proposed Order address the general requirements of ORS  
27 469.401(2), to protect the public health and safety.  
28

29 However, two parties specifically challenge the ASC on the basis of health and safety  
30 issues. FOPM argued that NWN has not satisfied the requirements of ORS 469.401(2) in  
31 the proposed location in the Parrett Mountain/Sherwood area; and Evelyn Staehely  
32 argues that NWN has this statute “requires a permit condition that aligns the pipeline  
33 under the pavement of Airport Road and not on Staehely’s adjacent EFU land.” She  
34 further argues that, located on the Staehely property, NWN has not established that the  
35 SMPE will not interfere with remediation efforts on her property.  
36

### 37 **1. FOPM Safety Issues**

38

39 FOPM makes numerous challenges regarding the safety of the proposed facility, and  
40 urges that NWN has not established that it can be safely located in the more urban/non-  
41 resource Parrett Mountain/Sherwood area. As stated above, ORS 469.401(2) is not a  
42 siting requirement, but rather requires conditions to protect public health and safety.  
43 FOPM does not propose any such conditions, but rather argues that the SMPE cannot be  
44 approved in the Parrett Mountain/Sherwood area because of safety issues. Neither ORS  
45 469.401(2) nor 469.501(1)(g) provide any authority to deny the ASC based on such  
46 generalized safety concern unrelated to a siting standard. Moreover, while FOPM frames

1 this as a safety issue, to a large extent, FOPM’s argument challenges the ORS  
2 215.283(1)(d) and ORS 215.275 statutory requirement that urban and non-resource sites  
3 be used if they are reasonably available. As FOPM acknowledges, those statutes are not  
4 independently subject to review in this case.

5  
6 To the extent FOPM’s argument can be considered an independent challenge requiring  
7 conditions under ORS 469.401(2), there is substantial evidence in the record that the  
8 conditions imposed satisfy that statutory requirement. Specifically, the evidence in the  
9 record establishes that the SMPE will meet or exceed all safety requirements, and in fact,  
10 that NWN’s attention to safety issues is commensurate with their ultimate obligation to  
11 ensure that its facilities, for which it is ultimately responsible, are designed, constructed  
12 and maintained to the highest possible safety standards. FOPM filed exceptions to the  
13 Recommended Order and participated in oral argument at the Council’s hearing.  
14 FOPM’S exceptions primarily focused on compliance with the structural standard.  
15 Council rejects FOPM’s argument that NWN has not adequately considered the public  
16 health and safety under ORS 469.401(2), and finds that no additional conditions are  
17 necessary to protect the public health and safety.

## 18 19 **2. Staehely Property Safety Issues**

20  
21 Evelyn Staehely raises the issue of safety with regard to the potential effect of the SMPE  
22 on existing contamination on the Staehely property (industrial solvents – CVOC’s) that  
23 has migrated on to the Staehely property from property owned by Columbia Helicopters  
24 (CHI). The Preferred Route of the SMPE borders the southwest corner of the Staehely  
25 property, extending along the southern and western property lines. To the west, the  
26 Preferred Corridor extends along Airport Road, and to the south, it extends along a the  
27 western portion of the south property line. (Panel 36.)

28  
29 Ms. Staehely explains that DEQ is directing a remediation of the CHI Superfund Site,  
30 which includes her property, and that on her property, the remediation remedy involves  
31 natural attenuation, which relies on natural biological processes within the soil and  
32 groundwater to dilute and remove the contamination. Ms. Staehely acknowledges that  
33 the groundwater flow on her property, at a depth of five to six feet below ground surface,  
34 extends northeasterly. Ms. Staehely presented expert testimony from a registered  
35 hydrogeologist, who questioned whether the SMPE pipeline could have an adverse  
36 impact on the remediation efforts. He does not conclude that the SMPE will necessarily  
37 negatively impact the remediation efforts. Rather, he asserts that a “focused feasibility  
38 study” would be necessary to confirm whether or not there would be any impacts.

39  
40 Based on the expert testimony, Ms. Staehely argues there is not enough data in the record  
41 to predict “with reasonable geologic probability that a preferential pathway or a recharge  
42 focus area created by NWN’s proposed pipeline will not have an effect on groundwater  
43 flow and thereby negate the ongoing remediation.” Evelyn Staehely Post Hearing Brief  
44 at 6. She questions NWN’s failure to consult with DEQ about the possible effects or  
45 whether further study is necessary. Based on the expert testimony, she further argues that  
46 “the risk from a preferential pathway or recharge focus area would be minimized if the

1 pipeline was placed under the pavement of Airport Road, because the pavement  
2 eliminates for practical purposes the infiltration of rainwater.” Staehely Posting Hearing  
3 Brief at 6. Alternatively, she urges “if the pipeline is not placed under the pavement,  
4 then a focused feasibility study is the only way of determining whether the proposed  
5 pipeline would negatively effect the ongoing remediation.” *Id.* Ms. Staehely reiterated  
6 these concerns in exceptions to the Recommended Order and in oral argument to the  
7 Council on March 5, 2003.

8  
9 NWN responded to Ms. Staehely’s expert testimony with expert testimony of its own  
10 from an URS engineer and soils scientist who was also involved in the CHI clean up  
11 project. His testimony counters that of Ms. Staehely’s expert, and concludes that the  
12 SMPE will “in no material way impact the CVOC’s in the groundwater (or the Staehely  
13 and CHI properties) or the ongoing natural attenuation remedy.” NWN Closing Brief at  
14 35, quoting David Weyman testimony. His conclusion is based on the location of the  
15 SMPE, “approximately 500 feet south of any area known to be contaminated” and the  
16 fact that the groundwater flow on the Staehely property (to the northeast) carries the  
17 contamination away from the SMPE. He further opines that the pipeline and trench will  
18 not intercept the recent average groundwater table beneath the Staehely property  
19

20 Ms. Staehely vehemently challenges the credibility of NWN's expert testimony on the  
21 basis that NWN's expert is not a hydrogeologist, as is hers. Ms. Staehely appears to  
22 argue that only a hydrogeologist is qualified to present credible testimony to challenge  
23 that of another hydrogeologist. However, notwithstanding the academic credentials of  
24 the experts, the testimony of the two experts, and particularly the factual information  
25 provided by them, does not compel a conclusion that the public health and safety requires  
26 an “focused feasibility study” to further evaluate this issue. Rather, the facts in this  
27 situation establish that the SMPE is proposed to be located 500 feet southwest of the  
28 known contamination. As Ms. Staehely acknowledges, the groundwater flows to the  
29 northeast, away from the pipeline. There is insufficient evidence that the contamination  
30 has spread to the southwest – toward the pipeline location – since the remediation began,  
31 or that the pipeline would otherwise interfere with the natural attenuation of the  
32 contamination. There is insufficient evidence to indicate that the public health and safety  
33 requires a “focused feasibility study” to further examine this issue. NWN reiterated its  
34 position in responses to exceptions and oral argument to the Council.  
35

36 As discussed above under the Land Use Standard, ORS 215.275 does not require that the  
37 SMPE be under the pavement. More significantly, from a safety perspective, there is  
38 more than a preponderance of evidence in the record that locating the SMPE under the  
39 pavement would be counter to the Council’s statutory obligation to protect the public  
40 health and safety.  
41

42 The Council finds that no additional conditions are necessary to ensure the public health  
43 and safety with regard to the Staehely property.  
44

### 45 **3. NWN Challenges to Safety Conditions**

46

1 NWN challenges the need for two of the conditions imposed in the Proposed Order,  
2 conditions 1 and 4(d). Condition One requires:

3  
4 “The pipeline shall be constructed and operated in accordance with 49 CFR 192  
5 regulations, and shall include isolation valves as specified in 49 CFR 192.179.  
6 Twenty four inch valves and cross ties shall be installed adjacent to the valves on  
7 the existing 16 inch pipeline.”

8  
9 Condition 4(d) requires:

10  
11 Continuing investigation of internal inspection devices (HD’s) or “smart pigs”  
12 with capability to detect internal flaws, corrosion, and other pipeline defects, and  
13 development of criteria for determining the utilization of HD’s or any other  
14 appropriate technologies for detecting flaws, corrosion and other indications that  
15 the likelihood of pipeline failure may have increased. Such criteria shall, at a  
16 minimum, be consistent with federal and OPUC regulations.”

17  
18 NWN argues that condition 1 should be deleted because it “would add one additional  
19 intertie station to the Project, which already exceeds the isolation-valve requirements in  
20 49 CFR Section 192.179 (2001). No party filed exceptions to Recommended Order on  
21 this issue. The Council finds that Condition 1 is unnecessary. NWN is mandated to  
22 comply with the requirements of 49 CFR 192 and specifically the isolation valve  
23 requirements specified in 49 CFR 192.179, regardless of this condition. The Proposed  
24 Order does not establish the necessity of requiring an additional intertie station to the  
25 Project in order to ensure compliance with public health and safety considerations of  
26 OAR Ch. 345, Division 24. The Council finds that this condition should be deleted.

27  
28 NWN argues that Condition 4(d) should also be deleted because “the ‘smart pig’ internal  
29 investigation device is a developing technology that may or may not prove to be the best  
30 industry standard. NW Natural should [not] be restricted solely to the use of smart pigs.  
31 NW Natural will continue to comply with federal and state requirements for pipeline  
32 safety.” However, contrary to this argument, Condition 4(d) does not limit NWN to the  
33 “smart pig” technology. Rather, although the language may be unclear, that Condition  
34 does not necessarily restrict NWN to the use of smart pigs. No other party filed  
35 exceptions to the Recommended Order on this issue. As modified to make clear that the  
36 “continuing investigation of internal inspection devices (HD’s) is not limited to smart  
37 pigs, The Council finds that this condition should be retained.

38  
39 The Council adopts the findings, reasoning and conclusions of the Proposed Order,  
40 subject to compliance with the conditions, as modified above, and finds that the  
41 proposed pipeline is appropriately conditioned to ensure public health and safety under  
42 ORS 469.401(2).

43  
44 **D. Requirements of Agencies Other than EFSC**

- 45  
46 **1. DSL Removal/Fill Permit**  
47 **2. Limited Water Use License (OAR 537 and OAR Chapter 690)**



1           **3. DEQ WPCF permit**

2  
3   The Proposed Order includes detailed analyses of the requirements and compliance with  
4   these applicable requirements. No party filed exceptions to the Recommended Order on  
5   these issues. The Council adopts the analyses, and the findings, reasoning and  
6   conclusions contained therein and the conditions proposed for the DSL Wetlands Permit,  
7   the WRD Limited Water Use License and the DEQ WPCF permit and finds that the ASC  
8   meets the requirements for compliance with these applicable requirements.

9  
10           **E. Requirements under OAR Ch. 345, Division 27**

11  
12   Division 27 of OAR Chapter 345 specifies the site certificate conditions, and lists  
13   mandatory conditions for all site certificates. The Proposed Order identifies mandatory  
14   conditions in accordance with OAR 345-027-0020, 0023 and 0028. In addition, as  
15   discussed above, OAR 345-027-0020(10) requires that the council “include as conditions  
16   in the site certificate all representations in the site certificate application and supporting  
17   record the Council deems to be binding commitments made by the applicant.

18  
19   This Final Order identifies several representations by NWN that the Council considers  
20   binding commitments for purposes of this conditioning authority. Some of those  
21   conditions are also authorized or required under other, specific standards, and are  
22   recommended as conditions in accordance with those standards. To the extent they are  
23   not otherwise recommended with regard to other siting standards, the Council imposes  
24   those conditions under OAR 345-027-0020(10).

25  
26   NWN challenges one of the mandatory conditions in the Proposed Order. Mandatory  
27   Condition 7 states:

28  
29           “The construction easement shall be limited to 80 feet, except where a narrower  
30           construction corridor is required by conditions related to individual Council  
31           standards.”

32  
33   NWN proposes to amend that condition to state that the easement is “generally” limited  
34   to 80 feet, and to add a provision that allows the easement to be wider when necessary  
35   based on “site-specific conditions.” NWN explains that the construction easement will  
36   almost always be 80 feet wide, but may need to be wider in some situations, where the  
37   laydown areas are adjacent to trenching areas and where road crossings and other  
38   physical constraints require additional work areas.

39  
40   The authority to modify the width of the construction easement as necessary is addressed  
41   in other relevant conditions. While the authorization to widen the construction easement  
42   based on “site-specific conditions” without any parameters on those conditions is both  
43   ambiguous and excessively discretionary, a modification to that condition to be consistent  
44   with other, more specific conditions is warranted. The Hearings Officer recommended  
45   that Condition 7 be modified to account for both a narrower or wider construction  
46   corridor, as required by other conditions.

1  
2 NWN filed exceptions to this recommendation. NWN argued that it was unclear whether  
3 other conditions would allow the temporary easement to be wider than 80 feet. NWN  
4 proposed additional language that would establish a process for determining when OOE  
5 could allow a wider easement. OOE filed a response to this exception, arguing that the  
6 process allowed OOE too much discretion and would constitute an unauthorized  
7 delegation of the Council's authority to OOE. Both parties participated in oral argument  
8 to the Council. Colloquy at the hearing among the Council, NWN, OOE and other  
9 interested parties resulted in the presentation of the following language for Council  
10 approval:

11  
12 The construction easement shall be generally limited to 80 feet, except where a  
13 narrower or wider construction corridor is required by conditions related to individual  
14 Council standards. NWN may deviate from this maximum construction easement  
15 width if such deviations are authorized by the OOE. To obtain authorization from  
16 OOE for a deviation in easement width, NWN must provide OOE with the following  
17 information: 1) the location of the requested deviation; 2) the reason(s) for the  
18 deviation and any documentation necessary to demonstrate such reasons; 3) the  
19 proposed easement width; and 4) measures that NWN will implement to mitigate  
20 additional impacts, if any, on resources protected by Council standards.

21  
22 In determining whether to approve the requested deviation, OOE shall provide a  
23 landowner with the opportunity to comment on the requested easement and on  
24 mitigation and minimization measures. OOE shall approve the requested deviation if  
25 it determines:

- 26 i. A landowner has granted a wider easement to accommodate topsoil removal and  
27 OOE concurs that the wider easement is necessary to accommodate additional  
28 topsoil removal;
- 29 ii. A deviation in easement width is necessary to comply with other site certificate  
30 conditions;
- 31 iii. A deviation in easement width is required to meet federal pipeline safety  
32 standards or OPUC or OSHA safety standards;
- 33 iv. A deviation in easement width is necessary to accommodate:
- 34 a) Laydown and workspace areas for HDD, slick bore, prefabrication  
35 and pipe forming areas;
- 36 b) Staging areas for wetland, stream and road crossings and  
37 hydrostatic testing withdrawal and discharge areas;
- 38 c) Temporary construction parking and pipe and construction material  
39 storage; or
- 40 d) Topsoil and subsoil storage areas for side slope or excess trench  
41 depth; or
- 42 v. A deviation in easement width is necessary to avoid irrigation infrastructure,  
43 existing utilities, or other structures; and
- 44 vi. NWN will implement mitigation measures as consistent with state law and this  
45 site certificate to mitigate or minimize any additional impacts to resources  
46 protected by Council Standards.  
47

1 At its March 13, 2003 hearing, the Council determined that this condition contained an  
2 ambiguity that would be removed by deleting the word “generally” in the first sentence.  
3 The Council adopts this revision to Mandatory Condition 7.

4  
5 In their exceptions to the Recommended Order, the Knights urged the Council to adopt a  
6 condition prohibiting NWN from extending service from the pipeline, based on an  
7 alleged representation made by NWN in its opening brief. NWN opposed the imposition  
8 of that condition. Both parties argued their positions at the Council meeting. OOE also  
9 filed a response to the Knights’ exception, arguing that such a condition was a local  
10 permitting matter and beyond the Council’s authority. The Council agrees and finds that  
11 the statement in NWN’s opening brief was not a representation to be included as a  
12 condition in this site certificate.

13  
14 **V. Conclusions, Order and Conditions:**

15  
16 Based upon the review of the record, excluding any evidence not properly or timely made  
17 a part of the record and including the Application for Site Certificate, the Proposed Order,  
18 the Hearing Officer’s Recommended Order and findings contained therein, parties’  
19 exceptions and responses to exceptions to the Recommended Order and oral argument of  
20 the parties, the Council adopts the OOE Proposed Order, attached to the Council’s final  
21 order as Attachment C, as specifically modified by the Council’s final order, and  
22 approves a site certificate for the SMPE, subject to compliance with the following  
23 conditions of approval:

24  
25 A. Mandatory Conditions from OAR Chapter 345, Division 27

- 26  
27 1) NWN shall submit to the Office two copies of a legal description of the site to be  
28 appended to the Site Certificate prior to beginning operation. For the purposes of this  
29 site certificate, the term "legal description" means a legal description of the  
30 permanent maintenance easements recorded by NWN, and an accurate map or set of  
31 maps that clearly and specifically the boundaries of the maintenance easements. The  
32 map must be in no smaller scale than 1 inch to 500 feet. In the event of a conflict  
33 between the recorded easements and the map, the recorded easements will control.  
34  
35 2) The pipeline shall be designed, constructed, operated and retired substantially as  
36 described in the Final Order Approving Site Certificate; in compliance with the  
37 requirements of ORS Chapter 469, applicable Council rules, and applicable state and  
38 local laws, rules and ordinances in effect at the time the Site Certificate is issued; and  
39 in compliance with all applicable permit requirements of other state agencies.  
40  
41 3) Construction shall commence not later than 18 months after issuance of the site  
42 certificate or the final resolution of appeals and shall be completed not later than three  
43 years following the commencement of construction. In no event shall construction  
44 commence after July 1, 2005.  
45  
46 4) No construction, including clearing of a right of way, except for the initial survey,  
47 may commence on any part of the facility until the certificate holder has adequate

1 control, or has the statutory authority to gain control, of the lands on which clearing  
2 or construction will occur

- 3
- 4 5) NWN shall prevent any condition over which NWN has control from developing on  
5 the site that would preclude restoration of the site to a useful condition.
- 6
- 7 6) NWN shall restore vegetation to the extent practicable and shall landscape portions of  
8 the area disturbed by construction in a manner compatible with its surroundings  
9 and/or proposed future use. Upon completion of construction, NWN shall dispose of  
10 all temporary structures not required for future use and all refuse and flammable  
11 materials or combustible material resulting from the clearing of land or from  
12 construction of the facility, as well as timber and brush that is not used for habitat  
13 mitigation in accordance with conditions related to the Council's Fish and Wildlife  
14 Habitat standard.
- 15
- 16 7) The construction easement shall be limited to 80 feet, except where a narrower or  
17 wider construction corridor is required by conditions related to individual Council  
18 standards. NWN may deviate from this maximum construction easement width if  
19 such deviations are authorized by the OOE. To obtain authorization from OOE for a  
20 deviation in easement width, NWN must provide OOE with the following  
21 information: 1) the location of the requested deviation; 2) the reason(s) for the  
22 deviation and any documentation necessary to demonstrate such reasons; 3) the  
23 proposed easement width; and 4) measures that NWN will implement to mitigate  
24 additional impacts, if any, on resources protected by Council standards.

25

26 In determining whether to approve the requested deviation, OOE shall provide a  
27 landowner with the opportunity to comment on the requested easement and on mitigation  
28 and minimization measures. OOE shall approve the requested deviation if it determines:

- 29 i. A landowner has granted a wider easement to accommodate topsoil removal and  
30 OOE concurs that the wider easement is necessary to accommodate additional  
31 topsoil removal;
- 32 ii. A deviation in easement width is necessary to comply with other site certificate  
33 conditions;
- 34 iii. A deviation in easement width is required to meet federal pipeline safety standards  
35 or OPUC or OSHA safety standards;
- 36 iv. A deviation in easement width is necessary to accommodate:
- 37 a) Laydown and workspace areas for HDD, slick bore, prefabrication and  
38 pipe forming areas;
- 39 b) Staging areas for wetland, stream and road crossings and hydrostatic  
40 testing withdrawal and discharge areas;
- 41 c) Temporary construction parking and pipe and construction material  
42 storage; or
- 43 d) Topsoil and subsoil storage areas for side slope or excess trench depth;  
44 or
- 45 v. A deviation in easement width is necessary to avoid irrigation infrastructure,  
46 existing utilities, or other structures; and

- 1 vi. NWN will implement mitigation measures as consistent with state law and this site  
2 certificate to mitigate or minimize any additional impacts to resources protected by  
3 Council Standards.  
4
- 5 8) After construction, the site, as that term is defined in ORS 469.300 and OAR 345-01-  
6 0010, shall be the 40 foot wide permanent easement between the Bacona Blowdown  
7 Station and the Molalla Gate Station  
8
- 9 9) Before any transfer of ownership of the facility or ownership of the site certificate  
10 holder, NWN shall inform the Office of Energy of the proposed new owners. The  
11 requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a  
12 transfer of the site certificate  
13
- 14 10) If the Council finds that the certificate holder has permanently ceased construction or  
15 operation of the facility without retiring the substantially as described in Section  
16 IV.A.6 of the Proposed Order (Attachment C to the Final Order), the Council may  
17 direct the Office to prepare a proposed a final retirement plan for the Council's  
18 approval. Upon the Council's approval of the final retirement plan, the Council may  
19 draw on the bond or letter of credit described in OAR 345-027-0020(8) to restore the  
20 site to a useful, non-hazardous condition according to the final retirement plan, in  
21 addition to any penalties the Council may impose under OAR Chapter 345, Division  
22 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of  
23 retirement, the certificate holder shall pay any additional cost necessary to restore the  
24 site to a useful, non-hazardous condition. After completion of site restoration, the  
25 Council shall issue an order to terminate the site certificate if the Council finds that  
26 the facility has been retired according to the approved final retirement plan.  
27

28 B. Site Specific Conditions under OAR 345-027-0023  
29

- 30 1) NWN shall notify OOE, the State Building Codes Division and the Department of  
31 Geology and Mineral Industries promptly if site investigations or trenching reveal  
32 that subsurface conditions differ significantly from those described in the Application  
33 for Site Certificate. The Council may, at such time, require the certificate holder to  
34 propose additional mitigating actions in consultation with the Department of Geology  
35 and Mineral Industries and the Building Codes Division.  
36
- 37 2) NWN shall notify OOE, the State Building Codes Division and the Department of  
38 Geology and Mineral Industries promptly if shear zones, artesian aquifers,  
39 deformations or clastic dikes are found at or in the vicinity of the site.  
40
- 41 3) NWN shall submit to OOE copies of all incident reports involving the certified  
42 pipeline required under 49 CFR §192.709.  
43

44 A. Monitoring Conditions under OAR 345-027-0028  
45

- 46 1) NWN shall establish, in consultation with affected state agencies and local  
47 governments, monitoring programs as required by the Site Certificate for impact on

1 resources protected by the standards of OAR Chapter 345, Divisions 22 and 24 and to  
2 ensure compliance with the Site Certificate. The programs shall be subject to the  
3 review and approval of the Council.

- 4
- 5 2) NWN shall establish monitoring programs as required by permitting agencies and  
6 local governments, as required by the Site Certificate.
  - 7
  - 8 3) If NWN becomes aware of a significant environmental change or impact attributable  
9 to the facility, NWN shall submit to OOE as soon as possible a written report  
10 identifying the issue and assessing the impact on the facility and any affected Site  
11 Certificate conditions.

12

13 B. Conditions under OAR 345-027-0020(10)

- 14
- 15 1) NWN shall locate the SMPE within the road right-of-way along Davis, Milne, Leisy  
16 and Pleasant Valley Roads. The maintenance/operation easements for these portions  
17 of the site shall be within the existing road rights-of-way. The width and location of  
18 the construction easement for these portions of the site shall be governed by General  
19 Land Use Condition 5 (requiring that the easement be no more than 80 feet in width,  
20 beginning at the centerline of the road right-of-way).
  - 21
  - 22 2) On the Flint property, along Scholls Ferry Road, NWN shall locate the pipeline so as  
23 to avoid any disruption to the 100 year old chestnut tree that is being registered as a  
24 Heritage Tree.
  - 25
  - 26 3) NWN shall not use the Alternate Corridor Segment (along Sherwood Road, Stark  
27 Road, LeBeau, Eastview, and Kruger Road) as shown on panels 24 through 26 of  
28 Exhibit K-2 of the Application. The other proposed alignments for the Corridor in  
29 this segment of the facility are not affected by this condition and are available for use,  
30 subject to compliance with all other applicable conditions

31

32 F. Conditions related to EFSC Standards

33

34 *Organizational Expertise Standard:*

- 35 1) NWN shall contractually all contractors and subcontractors involved in the  
36 construction and operation of the Project to comply with all applicable laws and  
37 regulations and with the terms and conditions of the site certificate. Such contractual  
38 provision shall not operate to relieve the certificate holder of responsibility under the  
39 site certificate.
- 40
- 41 2) NWN shall obtain all necessary state and local permits or approvals required for the  
42 construction, operation and retirement of the Project.

43

44 *Structural Standard:*

- 45 1) NWN shall assess seismically induced damage from slope movement following any  
46 earthquake that generates peak ground accelerations in excess of 0.1g along the  
47 corridor.

- 1  
2 2) NWN shall design and construct the pipeline substantially in accordance with the  
3 recommendations of Appendix H-1 of the Application, Section 6.1: "Hazard  
4 Mitigation."  
5  
6 3) During construction of the pipeline, NWN shall provide that construction is observed  
7 by a qualified geo-professional to ensure that the recommendations contained in  
8 Appendix H-1 of the Application are implemented properly and that any unforeseen  
9 field conditions are reported to NWN. If changes are encountered in the field, NWN  
10 shall ensure that the pipeline design is modified to provide for safe installation and  
11 operation of the pipeline.  
12  
13 4) In areas of critical geotechnical importance, trenching will not proceed without  
14 confirmation that OOE and DOGAMI have been notified at least one week in  
15 advance. This notice is required to afford OOE and DOGAMI the opportunity to  
16 send qualified monitoring personnel, which monitoring shall be performed at NWN  
17 expense. If NWN provides timely notice, the failure of OOE or DOGAMI to send  
18 qualified personnel shall not prevent NWN from performing the specified work. The  
19 critical areas are defined as the corridor north of the point where Dairy Creek Road  
20 terminates, and the corridor between Brookman and Tooze Roads.  
21  
22 5) On properties to which NWN has been denied access prior to issue of this site  
23 certificate, a registered geologist or geotechnical engineer shall be present during  
24 trenching along the ridge north of where Dairy Creek Road terminates, and also on  
25 private property between Brookman Road and the intersection with Ladd Hill Road,  
26 and shall provide to OOE a written record of observations prior to pipeline operation.  
27  
28 6) NWN shall follow a schedule of right-of-way monitoring for landslide hazard, based  
29 on the following criteria:  
30  
31 - immediately after 4 or more inches of rain within 48 hours  
32 - immediately after 6 or more inches of rain within 7 days  
33 - immediately after a rain on snow event that might have a similar effect as  
34 either of the above precipitation events.  
35

36 Rainfall shall be measured using METARS and RAWS, including Miller Station, as  
37 described by URS.  
38

- 39 7) In addition to strain gauges installed on the pipeline, NWN shall install vertical and  
40 horizontal inclinometers in appropriate locations to monitor for ground movement in  
41 the vicinity of the Sherman Mill slide. The installation shall be prior to or concurrent  
42 with pipeline construction. NWN shall monitor these instruments and report findings  
43 to OOE yearly after installation. If the instruments indicate ground movement that is  
44 different from what was predicted in the ASC, NWN shall promptly report to the  
45 Council and describe any corrective actions necessary to alleviate danger to the  
46 pipeline.

1  
2 *Soil Protection Standard*

- 3 1) NWN shall use erosion prevention techniques and sediment control measures as  
4 described in the Erosion Prevention and Sediment Control Manual (December 2000)  
5 jointly developed by the Clean Water Agency, Washington County, Clackamas  
6 County, and the city of West Linn, or its successor. Use of these measures shall not  
7 be limited to Washington County.  
8  
9 2) OOE will hire an independent, qualified agricultural inspector to facilitate, verify,  
10 document and enforce the implementation of the AIMP. This agricultural inspector  
11 will work with NWN, who will continue to have primary responsibility to implement  
12 the measures described in the AIMP, in accordance with its terms. NWN will  
13 reimburse OOE for the expense of the independent agricultural inspector.  
14  
15 3) NWN shall implement the Agricultural Impact Mitigation Plan (AIMP) (October  
16 2001) and all steps contained therein, except that the AIMP shall be modified to  
17 require segregation of topsoil to the "A" horizon, as opposed to the 12 inches  
18 described in the AIMP. As a supplement to the AIMP, NWN shall implement the  
19 Post Construction Crop Monitoring Plan (PCCMP) (November, 2002) and all steps  
20 contained therein. The AIMP, including revisions adopted by the Council, is  
21 included as Attachment D to the Final Order.  
22  
23 4) NWN shall design and construct the pipeline substantially in accordance with the  
24 representations made in Exhibit I of the Application for Site Certificate, March 2001.  
25 Mitigation steps that are described in Exhibit I and are not listed in the AIMP are  
26 nonetheless considered binding commitments by NWN and shall apply.  
27  
28 5) Site specific mitigation measures shall be tailored to the soil type, as listed in Tables  
29 I-2, I-3 and I-4 of the ASC.  
30  
31 6) NWN shall certify that all NWN and contract supervisory personnel with construction  
32 responsibility are trained in the specific mitigation requirements described in Exhibit  
33 I, the Agricultural Impact Mitigation Plan, and the Council's final order. Plans,  
34 subject matter, and the schedule for this training shall be made available to OOE and  
35 ODA prior to start of construction.  
36

37 *Land Use Standard*

38 **General Land Use Conditions**

- 39 1) Definition of "Easement." For purposes of the conditions contained in this order and  
40 site certificate, the term "easement" means both the area within an existing public  
41 road or highway right-of-way within which the construction, operation and/or  
42 maintenance of the facility is authorized by a county or state permit or other similar  
43 governmental authorization, and any adjoining easement area outside of the right-of-  
44 way.  
45



- 1 2) Permanent Easement: Arterials and Collectors in an EFU Zone. Where the corridor  
2 includes existing public road or highway right-of-way (whether or not that right-of-  
3 way is improved) within an EFU district, and the road or highway is classified by the  
4 county or by the state as an arterial or collector road, the maintenance/operation  
5 easement for that portion of the facility shall be located so that the edge of the  
6 easement begins at the centerline of the right of way. In addition, the width of the  
7 maintenance/operation easement for this portion of the facility may extend beyond  
8 the edge of existing public road or highway right-of-way by up to 20 feet.  
9
- 10 3) Construction Easement: Arterials and Collectors in an EFU Zone. Where the  
11 corridor includes existing public road or highway right-of-way (whether or not that  
12 right-of-way is improved) within an EFU district, and the road or highway is  
13 classified by the county or by the state as an arterial or collector road, the construction  
14 easement for that portion of the facility shall be located so that the edge of the  
15 easement begins at the centerline of the right of way. In addition, the width of the  
16 construction easement for this portion of the facility may extend beyond the edge of  
17 existing public road or highway right-of-way by up to 50 feet.  
18
- 19 4) Permanent Easement: Local Roads in an EFU Zone. Where the corridor includes  
20 existing public road or highway right-of-way (whether or not that right-of-way is  
21 improved) within an EFU district, and the road or highway is classified by the county  
22 or by the state as a local road, the maintenance/operation easement for that portion of  
23 the facility shall be located so that the edge of the easement begins at the centerline of  
24 the right of way. In addition, the width of the maintenance/operation easement for  
25 this portion of the facility is limited to no more than 40 feet, measured from the  
26 centerline of the road right-of-way.  
27
- 28 5) Construction Easement: Local Roads in an EFU Zone. Where the corridor includes  
29 existing public road or highway right-of-way (whether or not that right-of-way is  
30 improved) within an EFU district, and the road or highway is classified by the county  
31 or by the state as a local road, the construction easement for that portion of the facility  
32 shall be located so that the edge of the easement begins at the centerline of the right  
33 of way. In addition, the width of the construction easement for this portion of the  
34 facility is limited to no more than 80 feet, measured from the centerline of the road  
35 right-of-way.  
36
- 37 6) General Width Restrictions (All Zones): Unless otherwise allowed by these  
38 conditions, the permanent easements for the facility are limited to no more than 40  
39 feet in width, and the temporary/construction easements are limited to no more than  
40 80 feet in width. See also, Mandatory Conditions 7 and 8. In the event of any  
41 conflict between this condition, conditions 2-5 above, or mandatory conditions 7 or 8,  
42 the following priority shall control: (a) Mandatory Condition 7 shall take first  
43 priority in the event of any conflict involving a temporary/construction easement; (b)  
44 General Land Use Conditions 2-5 shall take next priority; and (c) the general widths  
45 of 40 and 80 feet specified in this condition and in mandatory conditions 7 and 8 shall  
46 control to the extent that (a) and/or (b) do not.

- 1
- 2 7) Conflict with Existing Utility Lines. Notwithstanding conditions 2, 4 and 6, above,  
3 where there are existing utility lines in that portion of the public road or highway  
4 right-of-way where the facility would otherwise be located, the  
5 maintenance/operation easements for the facility may extend outside of the existing  
6 road or highway right-of-way by up to 20 feet, regardless of the classification of the  
7 road and regardless of the resulting overall width of the easement.
- 8
- 9 8) Conflict with Safety Regulations. Notwithstanding conditions 2, 4 and 6, above, the  
10 maintenance/operation easements for the facility may extend further outside of  
11 existing road or highway right-of-way (than otherwise allowed by conditions 1-7,  
12 above) where necessary to comply with safety regulations of Oregon Occupational  
13 Safety and Health Administration or the Oregon Public Utilities Commission.
- 14
- 15 9) Split Zone Corridor. Where the corridor includes lands on both sides of a public  
16 road, and those lands are zoned EFU only on one side of the road, NWN shall locate  
17 the facility on the side of the road that is not zoned EFU except where NWN  
18 demonstrates that it would be necessary to remove or displace a building to stay on  
19 the non-EFU side. This condition may be relaxed if using the non-EFU side would  
20 unavoidably result in the pipeline being less than 40 feet from a building used for  
21 human occupancy.
- 22
- 23 10) Avoidance of Category 1 or Category 2 Habitat. If the construction or permanent  
24 easements in or adjacent to road right-of-way would affect Category 1 or Category 2  
25 habitat as described in section IV.7 of the Proposed Order (Attachment C of the  
26 Council's final order), the construction or permanent easement may be sited on land  
27 in the EFU zone that is not within the existing road right-of-way, to the extent  
28 necessary to avoid Category 1 or 2 habitat. In such cases the easement shall be  
29 located as close to the road right-of-way as possible. This permission shall not apply  
30 if the habitat will be avoided through HDD or other boring techniques. EFU land that  
31 is not in the public road right-of-way shall not be use to avoid habitat of category 3 or  
32 lower.
- 33
- 34 11) Where the corridor for the facility includes the right-of-way of the existing South  
35 Mist Feeder line, the permanent easement for the facility shall follow the existing  
36 SMF line and the width of the right-of-way for the two pipelines shall not exceed 40  
37 feet.

38

39 **Wash. Co. Floodplain and Drainage Hazard Regulations (WCC § 421), Erosion**  
40 **Control Regulations (WCC § 426), and Grading and Drainage Regulations (WCC §**  
41 **410):**

- 42
- 43 1) NWN shall obtain from the Washington County Operations Division, and its  
44 equivalent in Clackamas and Marion counties, all required utility permits to allow  
45 construction of the pipeline within the County road right-of-way. A copy of the  
46 permit shall be submitted to the Land Use planner for that county.

- 1
- 2) NWN shall provide the Washington County Land Development Division Project  
3 Planner, and the equivalent in Clackamas and Marion counties, with a copy of any  
4 permits from the Oregon Division of State Lands and/or the U.S. Army Corps of  
5 Engineers for work that will be done in flood plain areas within those counties.  
6
- 7) Prior to construction, NWN shall provide Washington County with the detailed  
8 grading plan and obtain a grading permit from Washington County pursuant to WCC  
9 § 410.  
10
- 11) NWN shall obtain equivalent utility and grading and drainage permits in Clackamas  
12 and Marion Counties as applicable.  
13
- 14) Prior to construction, NWN shall provide the Washington County Land Use  
15 Department with the floodplain delineations meeting the requirements of WCC 421-  
16 1.2 A, B, and C.  
17
- 18) Prior to construction, NWN shall submit detailed topographic information meeting  
19 the requirements of WC 421-3, prepared by civil engineer registered in Oregon.  
20
- 21) NWN shall implement the mitigation measures in the “Flood Hazard Impact  
22 Mitigation Plan” submitted as Appendix K-10 of the ASC.  
23
- 24) NWN shall provide a statement by a registered civil engineer affirming that the  
25 pipeline confirms with the standards of WCC § 421-10.  
26
- 27) NWN shall perform any maintenance on the maintenance easement outside public  
28 right of way by means of hand implements (under WCC 421-14 lawn mowers are  
29 considered hand implements).  
30
- 31) Excess soils generated by trench excavation and backfill shall be hauled off of the  
32 pipeline alignment and disposed of in an approved fill site area. Surface conditions  
33 shall be restored to pre-construction slopes and grades and disturbed areas shall be  
34 revegetated.  
35
- 36) If the pipeline crosses a stream or drainage hazard area, it shall be installed six feet  
37 below the bottom of the natural channel. The channel shall be restored to its original  
38 conditions.  
39
- 40) NWN shall allow no above ground structures that will catch debris or impede  
41 floodwater flow. Protective fencing required around above ground facilities shall be  
42 designed not to impeded floodwater flow.  
43
- 44) The existing grades and dimensions of the floodway shall not be changed. Trench  
45 excavations that have disturbed vegetation shall be revegetated.  
46

- 1 14) NWN shall not dump fill material in a flood area without a permit from Washington  
2 County.  
3
- 4 15) NWN shall equalize cut and fill and shall certify at the completion of construction of  
5 the pipeline that no net fill has occurred in flood hazard areas, except for post-  
6 construction “crowning” to allow for soil settlement.  
7
- 8 16) NWN shall observe Washington County’s preference for enhancement of riparian  
9 habitats through planting or other such improvements. WCC Section 421-4.6B  
10 recommends the planting of “at least 5 plants per 100 feet of bank area.”  
11
- 12 17) NWN shall implement the Erosion and Sediment Control Plan submitted as ASC  
13 Exhibit K-11. Note – the Washington County 1991 Manual is replaced by the CWA  
14 Erosion Prevention and Sediment Control Manual dated 12/2000  
15
- 16 18) Prior to construction, NWN shall provide OOE with documentation of Washington  
17 County review of the final Erosion Control Plan.  
18
- 19 19) Other conditions requested by affected local governments:  
20
- 21 20) For any section of the pipe placed under the road, NWN shall restore the road to pre-  
22 construction condition or better, and to a standard designed for normal traffic loading  
23 for a 20 year life.  
24
- 25 21) NWN shall consult with the appropriate County’s operations department regarding  
26 load capacity for any bridges utilized during construction.  
27
- 28 22) NWN shall coordinate any road closures through the affected County.  
29
- 30 23) NWN shall not deposit spoils from the Tualatin Valley highway bore within the M-2  
31 district in Hillsboro.  
32
- 33 24) Construction hours for the project are 7:00 AM until 7:00 PM daily expect for  
34 Sundays. If work is proposed after these hours or on Sunday, NWN must obtain a  
35 variance from Washington County noise standards.  
36
- 37 25) NWN shall contact the Oregon Heritage Tree program during planning and  
38 construction to protect the tree resource located on highway 219 south of Hillsboro.  
39

40 **Agricultural Mitigation Conditions under ORS 215.275(5)**  
41

- 42 1) Crops prohibited over the pipeline shall be limited to mature fruit and nut trees, and  
43 ball and burlap nursery crops and other crops that require any mechanical digging or  
44 hand digging deeper than 3 feet. Additionally, Christmas trees that are more than 10  
45 years old, fence posts and other support posts, and other large trees shall be  
46 prohibited. Such crops and posts shall not be allowed within 5 feet of the pipe

1 centerline, for a total width of 10 feet. Farmers may install fencing or cross the  
2 pipeline above or below the pipe for water service and drainage with prior  
3 notification to and written approval by NWN, which approval shall not be  
4 unreasonably withheld. Permanent surface structures and permanent reforestation  
5 activities are prohibited over the entire 40-foot permanent easement area.  
6

- 7 2) NWN shall not preclude use of propane blasters for gopher control on private  
8 property near the easement. The company shall analyze and negotiate the use of such  
9 equipment in close proximity to the pipeline.  
10

11 **Site Specific Land Use Conditions**  
12

- 13 1) In the corridor along Brookman Road, NWN shall locate the pipeline either within  
14 road right of way or in exception lands to the north of the road, unless  
15 a) NWN submits evidence to the Council that it has attempted to obtain the  
16 necessary wetlands permits from DSL and the US Army Corps of Engineers  
17 and cannot obtain one; or  
18 b) NWN obtains concurrence from OOE that the category 3 habitat cannot  
19 feasibly be mitigated consistent with the ODFW Habitat Mitigation Goals as  
20 required by OAR 345-022-0060.  
21
- 22 2) Along Dryland, Zimmerman and Heinz Roads, the SMPE shall be located within the  
23 Preferred Corridor.  
24

25 **Special Conditions for Temporary Laydown Area**  
26

- 27 1) Prior to the temporary, construction-related use of any laydown area shown on  
28 Appendix K-2 of the ASC, as supplemented in July 2001, that is outside the 200-foot  
29 pipeline corridor (the temporary laydown areas), NWN shall provide the Office of  
30 Energy with a map, aerial photograph or other depiction of the proposed temporary  
31 laydown area, together with a description of the temporary laydown area, including  
32 the zoning, physical conditions, existing uses, and any fieldwork studies performed at  
33 the temporary laydown area.  
34
- 35 2) Use of the temporary laydown areas shall conclude within one month of the date  
36 construction is complete. Mitigation for impacts to habitat and farm land shall be  
37 completed as soon as reasonably possible after the temporary use is concluded.  
38
- 39 3) The temporary laydown area shall not (1) be located within an area identified as  
40 Category 1 or 2 habitat; or (2) contain threatened or endangered species identified in  
41 Exhibit Q. It is expressly understood that the approval is only for temporary uses and  
42 no permanent uses will be allowed in these areas.  
43
- 44 4) NWN shall restore, as nearly as possible, to its former condition any agricultural land  
45 and associated improvements that are damaged or otherwise disturbed by the siting,  
46 maintenance, repair or reconstruction of the facility. Mitigation conditions applicable

1 under the Council's Soils standard, OAR 345-022-0022, shall apply to any temporary  
2 laydown area.

3  
4 *Protected Areas Standard*

- 5 1) During construction of the pipeline Willamette River crossing, NWN shall protect  
6 riparian areas on both sides of the river by locating all bore holes for directional  
7 drilling at least 200 feet from the river's edge on the north side of the river, and 400  
8 feet from the edge on the south side of the river.

9  
10 *Retirement and Financial Assurance Standard*

- 11 1) Prior to beginning construction, the certificate holder shall submit to the State of  
12 Oregon through the Council a bond or letter of credit in the amount of \$700,000 (in  
13 2001 dollars) naming the State of Oregon, acting by and through the Council, as  
14 beneficiary or payee.
- 15 a) The calculation of 2001 dollars shall be made using the U.S. Gross Domestic  
16 Product Implicit Price Deflator, as published by the U. S. Department of  
17 Commerce, Bureau of Economic Analysis, or any successor agency (the "Index").  
18 The amount of the bond or letter of credit account shall increase annually by the  
19 percentage increase in the Index and shall be pro-rated within the year to the date  
20 of retirement. If, at any time, the Index is no longer published, the Council shall  
21 select a comparable calculation of 2001 dollars. The form of the bond or letter of  
22 credit and identity of the issuer shall be subject to approval by the Council.
- 23 b) The bond or letter of credit shall not be subject to revocation or reduction prior to  
24 the certificate holder's satisfaction of Condition (2) below.
- 25
- 26 2) Upon completion of construction, NWN may reduce the amount of the bond or letter  
27 of credit to \$86,000 (in 2001 dollars) naming the State of Oregon, acting by and  
28 through the Council, as beneficiary or payee (the "Retirement Fund"). The  
29 calculation of 2001 dollars shall be made using the Index. The form of the  
30 Retirement Fund and identity of the issuer of the bond or letter of credit shall be  
31 subject to approval by the Council. The Retirement Fund shall not be subject to  
32 revocation or reduction prior to retirement of the energy facility.
- 33
- 34 3) The certificate holder shall describe the status of the Retirement Fund in the annual  
35 report submitted to the Council, pursuant to OAR 345-026-0080.
- 36
- 37 4) If the project is halted prior to completion, NWN shall restore any right of way that  
38 has been disturbed. NWN shall be responsible for backfilling of any open ditch,  
39 revegetation and restoration costs and any damages to rights of way as specified in  
40 easements.
- 41
- 42 5) Prior to termination of the Site Certificate, NWN shall retire the site sufficiently to  
43 restore it to a useful condition. Site restoration shall include, but not be limited to,  
44 steps to:
- 45 (a) Remove any hazardous material stored in buildings or located in process  
46 equipment and dispose of them following applicable state hazardous materials

- 1 statutes and rules,
- 2 (b) Remove above ground portions of all pipelines, and cut and cap the remaining
- 3 portion in five mile increments and at each end. NWN shall purge the
- 4 pipeline to ensure that all natural gas is removed.
- 5 (c) If necessary, revegetate the area, including pipeline right of ways, to prevent
- 6 erosion and encourage habitat development,
- 7 (b) Inspect all pipelines and remove any hazardous materials found, and dispose
- 8 of hazardous materials generated from cleaning the pipelines in accordance
- 9 with applicable state hazardous materials statutes and rules.
- 10
- 11 6) If the Council finds that NWN has permanently ceased construction or operation of
- 12 the SMPE without retiring the SMPE according to a final retirement plan approved by
- 13 the Council as described in OAR 345-027-0110, the Council shall notify NWN and
- 14 request that NWN submit a proposed final retirement plan to the Office within a
- 15 reasonable amount of time, not to exceed 90 days. If NWN does not submit a
- 16 proposed final retirement plan by the specified date, the Council may direct the Office
- 17 to prepare a proposed final retirement plan for the Council's approval. Upon the
- 18 Council's approval of the final retirement plan, the Council may draw on the bond or
- 19 letter of credit described in condition (1) of this section to restore the site to a useful,
- 20 non-hazardous condition according to the final retirement plan, in addition to any
- 21 penalties the Council may impose under OAR Chapter 345 Division 29. If the
- 22 amount of the bond or letter of credit is insufficient to pay the actual cost of
- 23 retirement, the certificate holder shall pay any additional cost necessary to restore the
- 24 site to a useful, non-hazardous condition. After completion of site restoration, the
- 25 Council shall issue an order to terminate the site certificate if the Council finds that
- 26 the SMPE has been retired according to the approved retirement plan.

27

28 *Fish and Wildlife Habitat Standard*

29 **General**

- 30 1) NWN shall take appropriate and reasonable measures to first avoid, then reduce, then
- 31 restore, and then compensate for impacts to fish and wildlife habitat that result from
- 32 construction and operation of the proposed project consistent with that habitat
- 33 category.
- 34
- 35 2) NWN shall reimburse the Office of Energy for costs associated with on-site
- 36 construction inspection monitoring by either OOE or ODFW.
- 37
- 38 3) NWN shall construct the pipeline within the construction corridor along the preferred
- 39 alignment (the "preferred alignment construction corridor") that was the basis for
- 40 Supplemental Table P-4 (May 15, 2002), Supplemental Table P-5 (March 5, 2002)
- 41 and the memo from Meehan, OOE, to Hayward, NWN, dated May 22, 2002, and the
- 42 Hayward reply to Meehan dated June 12, 2002. NWN may deviate from this
- 43 construction corridor if there is a conflict with other conditions of the site certificate,
- 44 requirements of other state, local or federal agencies, public health and safety, or if
- 45 new information is discovered during construction that was not known prior to
- 46 issuance of the site certificate.

1  
2 4) Where NWN must deviate from the preferred alignment construction corridor within  
3 the 200-foot Preferred Corridor or an Alternative Corridor Segment, NWN shall  
4 obtain permission from OOE for the following deviations: 1) any stream crossing that  
5 will not be bored as shown in Supplemental Table P-4 (May 15, 2002); 2) any  
6 deviation that would result in impact to a wetland with a higher status code than  
7 shown in the April 9, 2002 PHS table; 3) any deviation that would result in impact to  
8 Category 3 upland habitat subtypes (as described in Table P-1, Exhibit P) as shown in  
9 Supplemental Table P-5 (March 5, 2002). NWN shall not begin construction in a  
10 deviation until it has notified OOE and the OOE has approved the requested  
11 deviation.

12  
13 5) To obtain permission from the OOE for a deviation from the preferred alignment  
14 construction corridor, NWN must provide OOE the following information prior to  
15 disturbing the deviation area: 1) the location of the requested deviation; 2) the habitat  
16 categories and habitat subtypes of the original preferred alignment construction  
17 corridor referenced to Supplemental Table P-4 (May 15, 2002), Supplemental Table  
18 P-5 (March 5, 2002) and the PHS April 9, 2002 table; 2) the habitat categories and  
19 habitat subtypes within the requested deviation referenced to the tables listed above;  
20 3) the number of trees greater than 6-inch dbh that would be removed; 4) the reason  
21 for the deviation; and 5) any measures that NWN proposes to use to limit impact to  
22 fish and wildlife habitat in the deviation. If the deviation is due to unanticipated  
23 conditions during excavation, NWN shall notify OOE using the field method  
24 described in the following paragraph.

25  
26 The field method includes the following steps:

- 27  
28 (1) Identification of a problem with construction in a particular segment of  
29 the original preferred alignment;  
30 (2) Identification of an alternative segment;  
31 (3) Verbal notification of the Office of Energy and, as appropriate, other  
32 agencies;  
33 (4) Technical review of the alternative segment to ensure that construction  
34 in the alternative segment, taking mitigation into account, would not  
35 result in significant adverse impacts to resources protected by Council  
36 standards or other permitting criteria;  
37 (5) Review of zoning to ensure compliance with local land use laws;  
38 (6) Provision of information from steps (4) and (5) to OOE;  
39 (7) OOE site inspection, with involvement of other agency personnel, as  
40 appropriate; and  
41 (8) OOE concurrence, generally verbal, with construction in the  
42 alternative segment.

43  
44 6) The decision criteria for OOE approval of a deviation requested by NWN shall  
45 include: 1) whether the deviation would result in a smaller area of impact; 2) whether  
46 the deviation would result in impact to the same, a lower or a higher category habitat;



1 and 3) whether NWN provided appropriate documentation to OOE within the  
2 necessary time frame.

3  
4 7) NWN shall plan, construct, operate, restore, maintain and monitor and the project site  
5 consistent with the measures identified in its September 2001 Wetland Mitigation  
6 Plan, Section 2.5 “Construction Techniques” pages 2-4 to 2-11; Section 4.0  
7 “Conceptual Mitigation Approach” pages 4-1 to 4-2; Section 5.0 “Proposed  
8 Conceptual Mitigation” pages 5-1 to 5-3; Section 7.0 “Monitoring” page 7-1; and  
9 Section 8.0 “Maintenance and Contingency Plan” page 8-1.

10  
11 8) NWN shall plan, construct, operate, restore, maintain and monitor the project  
12 consistent with the measures identified in its September 2001 Habitat Mitigation Plan,  
13 Section 2.2 “Mitigation Goals” page 2-4; Section 2.5 “Construction Techniques” page  
14 2-5; Section 4.0 “Proposed Conceptual Mitigation by Category” pages 4-1 to 4-3;  
15 Section 5.0 “Performance Goals” page 5-1; Section 6.0 “Monitoring” page 6-1; and  
16 Section 7.0 “Maintenance Plan” page 7-1.

17  
18 9) NWN shall plan, construct, operate, restore, maintain and monitor the project  
19 consistent with the measure identified in Exhibit P of its March 2001 application for  
20 site certificate as supplemented by the June 2001 supplemental Exhibit P.

21  
22 10) NWN shall construct the project so as to avoid disturbance to all Category 1 habitat  
23 and all Category 2 permanent ponds.

24  
25 11) NWN shall provide a net-benefit to Category 2 habitats that are disturbed by  
26 construction. This may include, but is not limited to, placing large woody debris,  
27 clean sand, gravel and rocks within the stream channel at or near the crossing location  
28 of Category 2 streams, enhancing habitat quality by planting trees and other woody  
29 vegetation or by other measures that provide a net benefit that is acceptable to the  
30 Office of Energy in consultation with the Oregon Department of Fish and Wildlife.

31  
32 12) NWN shall use Best Management Practices (BMPs) to confine construction-related  
33 disturbance to the construction corridor.

34  
35 13) NWN shall not disturb wetland areas, riparian areas, or waterways until it has  
36 obtained all required section 401 and section 404 permits and approvals, including  
37 any required authorization relating to a federally-listed threatened or endangered  
38 species. If the conditions in the amended site certificate conflict with conditions  
39 imposed by the DEQ in its section 401 certification or the U.S. Army Corps in its  
40 section 404 permit, NWN shall consult with OOE and ODFW to resolve the conflict  
41 before beginning construction

42  
43 **Pre-construction**

44 14) NWN shall incorporate the conditions of the site certificate into its construction  
45 documents.

46

- 1 15) NWN shall provide a copy of its construction documents to the Office before  
2 beginning ground-disturbing activity (such as clearing or grading the construction  
3 corridor). These shall include five complete sets of detailed maps of the construction  
4 corridor that are cross referenced or indexed to habitat category maps provided to  
5 OOE.  
6
- 7 16) NWN shall mark the construction corridor to indicate areas where the corridor will be  
8 restricted to avoid impact to wetlands, riparian areas, streams and other sensitive,  
9 important or significant areas before any ground-disturbing activity (including  
10 clearing of vegetation). OOE shall be notified when marking is completed and OOE  
11 inspectors shall be afforded the opportunity to inspect the marked construction  
12 corridor prior to any ground-disturbing activity.  
13
- 14 17) NWN shall document pre-construction conditions at each Category 2 and 3 site  
15 within the construction corridor prior to any ground disturbing activity.  
16 Documentation shall include an Impact Inventory, including a cross reference to  
17 habitat and construction maps, description of the habitat category and habitat unit to  
18 be impacted, the number of trees and sizes to be removed, percent native shrub  
19 coverage, percent reed canary grass and noxious weed coverage, the acreage of the  
20 impacts and photographs of all stream crossings prior to clearing. The Impact  
21 Inventory will form the basis of the mitigation and will be included in the Detailed  
22 Mitigation Plan. The Impact Inventory shall be prepared by a qualified biologist.  
23
- 24 18) NWN shall give the Office at least 7 days notice before beginning ground-disturbing  
25 activity.  
26
- 27 19) NWN shall designate a qualified Environmental Inspector to work on all phases of  
28 the project, including pre-construction documentation, pipeline construction,  
29 restoration, post construction monitoring and preparation of the Detailed Mitigation  
30 Plan. The Environmental Inspector shall have the authority to stop construction  
31 activity temporarily to resolve environmental issues.  
32
- 33 20) NWN shall, before beginning ground-disturbing activity, identify to the Office the  
34 key personnel responsible for construction and environmental protection, including  
35 but not limited to NWN environmental inspectors and the pipeline construction  
36 company's environmental inspectors.  
37
- 38 21) NWN shall, before beginning ground-disturbing activity, conduct training of key  
39 employees and contractor personnel. Training shall cover applicable environmental  
40 regulations, including site certificate conditions that relate to fish and wildlife habitat,  
41 and NWN procedures for limiting impact to fish and wildlife habitat. NWN shall  
42 provide the Office advance notice of the time and place of training sessions and shall  
43 allow Office representatives to attend training sessions.  
44

1 **Construction**

2 22) NWN shall use straw and straw bales of oats, wheat, barley and red fescue that are  
3 certified to be free of noxious (as that term is defined in ODA regulation) and  
4 nuisance weed contamination for both temporary and permanent erosion control in all  
5 category 1, 2 and 3 habitats, including uplands (Exhibit I, pages I-42, 43, 49, AIMP  
6 18, 19)  
7

8 23) NWN shall use topsoil protection measures on all Category 2 and 3 habitats,  
9 including upland habitats shown in Table P-1 (March 2001 Application), except  
10 permanent ponds (PP2 and PP3). Topsoil and subsoil shall be removed and stored  
11 separately and backfilled in the reverse order (Conceptual Mitigation Plan, Part 1,  
12 Section 2 and CMP, Part 2, Section 2.5). If excavated topsoil contains plants  
13 proposed for salvage and re-planting, it shall be replaced within 24-hours. If the  
14 topsoil needs to be stored for more than 1 day, it will be covered with geotextile  
15 fabric and moistened to prevent drying and to ensure the viability of the plant species  
16 present (CMP, Part 1, Section 5.1).  
17

18 24) NWN shall, as necessary, use soil compaction mitigation measures on all Category 2  
19 and 3 habitats, including uplands. Backfilled soils shall resemble pre-construction  
20 soil profiles and compacted soil surfaces shall be hand raked or scarified by  
21 appropriate equipment prior to seeding.  
22

23 25) NWN shall use, if necessary, imported soil that is free of noxious weeds and reed  
24 canarygrass in Category 2 and 3 habitats, including uplands. NWN shall, prior to  
25 construction, submit to the Oregon Office of Energy the procedures it will use to  
26 ensure that imported soils are free of noxious weeds and reed canarygrass.  
27

28 26) NWN shall reduce and control increased sediment and turbidity by: 1) locating  
29 crossings to avoid unstable stream banks and the need to remove large trees; 2)  
30 dewatering the construction reach during construction (by using a dam-and-flume or  
31 hose-and-pump to pass water around the construction area); 3) routing water pumped  
32 from trenchlines to temporary surface water detention facilities prior to discharge; 4)  
33 using erosion and sediment controls during and after construction; 5) monitoring  
34 turbidity during construction; 6) stabilizing stream banks and stream beds after  
35 construction; and 7) any other measures that may be appropriate.  
36

37 27) NWN shall prevent stream bank instability after construction by: 1) locating crossings  
38 to avoid unstable stream banks and the need to remove large trees; 2) stabilizing  
39 affected stream banks and 3) using Best Management Practices (BMPs) to control  
40 slope erosion after construction.  
41

42 28) NWN shall prevent stream bed erosion after construction by restoring stream beds to  
43 their original condition (substrate and gradient), using appropriate geotextile fabrics  
44 or other measures, and adding large rocks and or gravel if needed.  
45

- 1 29) NWN shall prevent loss of spawning substrate by restoring stream beds to their  
2 original conditions, including replacing spawning gravels, and using appropriate  
3 measures to control or prevent the movement of soil and silt into streams.  
4
- 5 30) NWN shall reduce the direct impacts to wetland habitats by: 1) confining  
6 construction activities to a 40-foot wide construction corridor and minimizing heavy  
7 equipment use within wetlands to the extent practicable; 2) constructing in wetlands  
8 when they are dry, to the extent practicable; 3) using construction mats when  
9 appropriate; 4) removing topsoil (including plant roots) from the trench separately  
10 from subsoil, stockpiling topsoil and subsoil separately and placing the topsoil  
11 (including plant roots) on top of the subsoil when backfilling the trench; 5) installing  
12 water barriers along the pipeline trench and restoring impermeable soils to prevent  
13 draining wetlands; 6) using Best Management Practices (BMPs) to control erosion  
14 and turbidity and to prevent movement of loose soil beyond the construction corridor.  
15
- 16 31) Where wetlands and streams must be crossed, the pipeline will be routed through the  
17 least sensitive portions of the wetland or stream if it is feasible. The scrub-shrub and  
18 forested portions of wetlands and riparian areas shall be avoided to the greatest extent  
19 possible.  
20
- 21 32) Construction staging areas shall be located in upland and clearly marked with signs  
22 and temporary fencing.  
23
- 24 33) Equipment refueling shall occur a minimum of 100 feet from any wetland or stream  
25 channel and within a designated area. The refueling station should be equipped with  
26 appropriate hazardous spill containment/clean up materials.  
27
- 28 34) Construction through streams with flowing water and adjacent wetlands will occur  
29 during the designated ODFW-approved "in-water work times".  
30
- 31 35) NWN shall complete each stream crossing within a 24-hour period, if practicable. If  
32 the crossings require more than 24 hours to complete, appropriate methods to allow  
33 upstream and downstream fish passage for all life stages shall be implemented using  
34 methods approved by ODFW.  
35
- 36 36) NWN shall provide a qualified biologist on-site to prevent stranding fish and large  
37 aquatic invertebrates in the diversion reach during construction across Category 2 and  
38 Category 3 streams. The qualified biologist must be authorized by NWN to have  
39 stop activity authority if necessary to prevent stranding fish and large aquatic  
40 invertebrates.  
41
- 42 37) All flow diversions shall be removed and the hydrology of the site restored  
43 immediately after completion of construction. The stream channel morphology shall  
44 be restored to pre-construction conditions including riffle-pool morphology and  
45 stream channel substrate. In streams with gravel bottoms, appropriate sized gravel  
46 from local sources will be used to replace any stream gravels that are lost as a result

1 of construction. Streambanks will be stabilized and revegetated as soon as practical  
2 after construction is completed.

3  
4 38) NWN shall locate stream crossings to avoid removal of large (>6" dbh) trees where  
5 practicable and reduce the construction corridor from 80 feet in width to 40 feet  
6 within riparian and wetland habitats.

7  
8 39) NWN shall provide new woody debris in Category 2 habitats where appropriate and  
9 as necessary to provide a net benefit in habitat quantity or quality as determined by a  
10 qualified fisheries biologist. In-stream woody debris dimension, structure design and  
11 placement shall conform to criteria outlined in A Guide to Placing large Wood in  
12 Streams, May 1995 (Oregon Department of Forestry and Oregon Department of Fish  
13 and Wildlife), as determined by a qualified fisheries biologist.

14  
15 40) In wetlands and riparian areas, vegetation that must be removed will be cut at ground  
16 level, leaving the root system intact. Pulling tree stumps and associated grading  
17 activities will be limited to those tree stumps that would directly interfere with  
18 trenching, pipe installation and backfill.

19  
20 41) Clay trench plugs will be used to prevent diversion of subsurface water from  
21 wetlands. Trench plugs will be installed at each end of wetland crossings to prevent  
22 diversion of subsurface water from wetlands and avoid changes to wetland hydrology.  
23 An environmental monitor will inspect the pipeline trench to check for impermeable  
24 soil layers that may be penetrated during trenching. If impermeable layers are found  
25 in the trench, they will be avoided where this is possible, or repaired with clay plugs  
26 after the pipe is in place. Clay barriers should be installed on each side of any wetland  
27 crossing site.

28  
29 42) Matting will be used where this is necessary to support construction equipment in  
30 wetlands. Heavy construction equipment may work without construction mats in  
31 wetlands that are farmed, grazed or dry enough to support the equipment. In wetlands  
32 that are not dry enough to support the equipment, all construction activities will be  
33 carried out from the matting. Where matting is necessary, equipment will not be  
34 allowed in the wetland off the mats, at any time. The mats will be cleaned and  
35 inspected prior to placing in the wetland and mats with foreign material will not be  
36 used.

37  
38 43) Any trees felled within category 2 and 3 habitats shall remain within the habitat site  
39 as woody debris. Trees felled within the riparian area shall be used on site for  
40 instream habitat structures. If possible the trees should be pushed over to maintain the  
41 root ball with the tree trunk.

42  
43 44) NWN shall replant appropriate species and numbers of trees or shrubs as indicated by  
44 the Impact Inventory in all Category 2 and Category 3 habitats in which NWN  
45 removes trees or shrubs. Shrubs or trees less than 6-inch dbh shall be replaced at a 1-

1 to 1 ratio. Trees equal to or greater than 6-inch dbh shall be replanted on a  
2 replacement ratio as follows:  
3

Size of Tree to be removed (inches dbh)	Number of trees to be planted (24-36" height)
6 to 12	4
13-18	6
19-24	8
25-30	10
	12

- 4  
5 45) NWN may salvage and restore native plants removed intact from the pipeline  
6 trenching area.  
7  
8 46) NWN shall, at an appropriate location, thoroughly clean each unit of construction  
9 equipment with high-pressure washing before the initial move of that unit to the  
10 construction site. NWN shall, at an appropriate site, clean all construction mats that  
11 have been previously used before moving them to the construction site or placing  
12 them in a wetland.  
13  
14 47) NWN shall, at appropriate locations, thoroughly clean each unit of construction  
15 equipment before working in category 2 or 3 wetlands.  
16  
17 48) NWN shall restore the construction corridor in category 2 and 3 habitats by replanting  
18 and seeding with an approved seed mix to re-establish vegetation. NWN shall  
19 provide OOE the proposed ODFW-approved seed mix for review and approval prior  
20 to ground disturbing activity. Substitutions to the approved seed mixes must be  
21 approved by OOE.  
22  
23 49) The following actions must be performed immediately after backfilling the trench in  
24 trenched areas: (1) installation of erosion control measures; (2) seeding and mulching  
25 of exposed soils; (3) returning all stream beds and banks to pre-construction grade;  
26 (4) restoration of salvaged plant materials and; (5) placement of woody debris.  
27  
28 50) NWN must plant trees and shrubs, as indicated by the Impact Inventory and the  
29 Detailed Mitigation Plan approved by OOE, within 1 year of construction.  
30  
31 51) NWN shall prepare and submit to OOE for review an Impact Inventory protocol prior  
32 to ground disturbing activity. The protocol shall include a standardized data sheet  
33 and inventory format with all information stated in Condition 17, as well as cross  
34 references to habitat and construction maps. Copies of the field-completed impact  
35 inventory forms shall be available for review by OOE inspectors at the job site.  
36  
37 52) In the event of a release of drilling mud as a result of boring operations during  
38 pipeline construction, NWN shall stop the boring operation until a siltation fence is  
39 placed around the release point. NWN shall insure that the release point is fully

1 encircled with siltation fencing and that the fencing effectively contains the released  
2 mud. The drilling mud will be allowed to vent into the enclosure. NWN shall pump  
3 drilling mud from the enclosed area as needed until the boring operation is completed.  
4 If the enclosure becomes nearly full, NWN shall remove the drilling mud via a  
5 vacuum truck or pump depending on accessibility to the site. NWN shall leave the  
6 siltation fencing in place during the boring, back reaming, and pipe-pulling  
7 procedures, and until the vent has sealed. NWN shall not remove the enclosure until  
8 all evidence of the release has ceased.

9  
10 **Post-Construction**

11 53) NWN shall prepare and submit to OOE a Detailed Mitigation Plan (DMP) within 60  
12 days following the “used and useful” declaration to the OPUC.

13  
14 54) In the DMP, NWN shall:

- 15 (a) include the Impact Inventory for all segments of the pipeline;
- 16 (b) describe mitigation measures undertaken during the construction phase;
- 17 (c) propose specific additional mitigation measures that will achieve the fish and  
18 wildlife habitat mitigation goals and standards of OAR 635-415-0025 and  
19 prevent harm to the federally listed Upper Willamette River steelhead trout and  
20 Upper Willamette River Chinook salmon; including species, sizes, and quantities  
21 of proposed plantings;
- 22 (d) identify contingency measures, and remedial measures to ensure success criteria  
23 are met; and
- 24 (e) provide a realistic schedule for implementation of the DMP.

25  
26 55) The Office, in consultation with other agencies, shall review the Draft DMP and  
27 provide NWN with its comments, including changes to the DMP, if necessary within  
28 30 days of receipt of the DMP.

29  
30 56) Within 30 days following the receipt of OOE comments, NWN shall prepare and  
31 submit to OOE a Final DMP that incorporates agency comments. The Final DMP  
32 shall provide the basis for the monitoring report.

33  
34 57) NWN shall monitor the results of implementing the Final DMP and shall provide  
35 annual reports to the Office and other agencies for a minimum of three years. The  
36 monitoring reports shall include the Impact Inventory and provide documentation  
37 about restoration/enhancement methods, survival of salvaged and planted plants,  
38 assessment of streambank stability, net benefit in category 2 habitats, photographs  
39 from established pre-construction points, including all stream crossings, discussion of  
40 success criteria and remedial actions. The reports shall be prepared by a qualified  
41 biologist and submitted to the Office and ODFW by December 1.

42  
43 58) Success Criteria shall include meeting the ODFW fish and wildlife mitigation goal for  
44 each habitat category. In addition, restored areas shall, after 3 years, have: (1) the  
45 same number of native trees and shrubs as calculated for replacement in the Impact  
46 Inventory and according to the required replacement ratios (this may include native

1 plant volunteers); (2) less than 20 percent coverage of reed canary grass and noxious  
2 weeds (as defined by Oregon Department of Agriculture and local counties) in habitat  
3 units having pre-construction coverage of these plants less than 20 percent and as  
4 documented in the impact inventory.

5  
6 59) NWN shall take remedial actions if monitoring shows that implementation of the  
7 Final DMP is not successful and monitoring shall continue until the success criteria is  
8 met.

9  
10 **Operation and Maintenance**

11 60) NWN shall allow native vegetation, including trees, within the Maintenance  
12 Easement, except in a ten-foot-wide zone over pipeline, in all Category 2, Category 3  
13 and Category 4 habitats.

14  
15 61) NWN shall control vegetation within Maintenance Easement by mechanical means  
16 wherever practicable. NWN shall not use chemical spray within 100 feet of water  
17 bodies, including wetlands.

18  
19 62) NWN shall notify OOE prior to any scheduled repair activity that involves  
20 excavation, tree removal, or in-water work. The notification shall include site  
21 location, proposed activity, and a description of vegetation to be affected, if any. The  
22 notification shall also describe proposed measures to restore the repair site and limit  
23 impacts to fish and wildlife habitat, if applicable. For emergency repairs necessary to  
24 alleviate stress on the pipe or investigate potential damage discovered during  
25 inspections required by OPUC or U.S. DOT regulations or this site certificate, NWN  
26 may provide the notification as soon as practical following the repair.

27 .  
28 *Threatened and Endangered Species*

29 1) NWN shall schedule construction within one mile of documented or newly  
30 discovered bald eagle nest sites to avoid the critical breeding and rearing period  
31 (January 1 to August 31) for this species.

32  
33 *Historic, Cultural and Archaeological Resources*

34 1) Before beginning construction of the pipeline, NWN shall certify that all NWN and  
35 contract supervisory personnel with construction responsibility are trained in the  
36 identification of cultural resources. NWN shall make plans, subject matter and the  
37 schedule for this training available to OOE before commencement of the training  
38 program.

39  
40 2) During construction of the pipeline, in the event any additional “archaeological sites”  
41 or “archaeological objects” are identified, NWN shall cease all ground-disturbing  
42 activities in the area until a qualified archeologist can evaluate the significance of the  
43 find. If the archeologist determines that the materials are significant, NWN shall  
44 make recommendations to the Council for mitigation in consultation with SHPO, the  
45 Office, and other appropriate parties. Mitigation measures shall include avoidance or  
46 data recovery. NWN shall not restart work in the affected area until it has



1 demonstrated to the Office that it has complied with the archeological permit  
2 requirements administered by SHPO as set forth in OAR Chapter 736, Division 51  
3 (on public land) or has obtained the landowner's written permission to proceed (on  
4 private land.)  
5

6 3) During construction of the pipeline, NWN shall route the pipeline as described in its  
7 application for site certificate and its responses to requests for additional information.  
8 Specifically, NWN shall route the pipeline as follows, unless NWN, in consultation  
9 with a qualified archaeologist, identifies another location which has less impact to  
10 these sites: in the vicinity of site S-1, within the existing 16-inch SMF pipeline  
11 corridor on the western boundary of the site; in the vicinity of site 35WN33, within  
12 the existing pipeline corridor on the west and south edges of the site; in the vicinity of  
13 site 35WN35, within the existing pipeline corridor, offset from the 16-inch SMF  
14 pipeline by 10 feet; in the vicinity of site ORWN1/35WN34, west of the existing  
15 pipeline corridor and by means of boring under the area; in the vicinity of site S-2,  
16 east of the eastern boundary of the site; and in the vicinity of site S-5, in fill and  
17 previously disturbed materials under the road within the Barlow Road right-of-way.  
18 NWN shall not disturb archaeological sites S-3 and S-4.  
19

20 4) During construction of the pipeline, NWN shall avoid any disturbance within  
21 archaeological sites S-1, S-2, S-3, S-4, 35WN33 and ORWN1/35WN34. If such  
22 avoidance result in adverse impact to jurisdictional wetlands or habitat described in  
23 Exhibit P of the ASC, causes the use of additional land in the EFU zone outside  
24 public right of way, creates a conflict with other Council standards, or creates a  
25 condition adverse to human health and safety, NWN shall obtain approval from OOE,  
26 in consultation with SHPO, before causing any disturbance within any of these  
27 archaeological sites.  
28

29 5) During construction of the pipeline, NWN shall retain a qualified archaeologist to  
30 monitor construction activity in the vicinity of archaeological sites S-1, S-2, S-3, S-4,  
31 S-5, 35WN33, 35WN35, and ORWN1/35WN34 and all grading and excavation  
32 activities in the vicinity of isolated finds I-1 through I-13 to ensure that  
33 archaeological resources in these locations are not disturbed.  
34

35 6) Before beginning construction, NWN shall conduct an archaeological survey of the  
36 temporary laydown areas and shall submit a report of the survey to the Office of  
37 Energy. If archaeological objects or archaeological sites are discovered in the  
38 temporary laydown areas, NWN may not begin construction of that portion of the  
39 pipeline until NWN has submitted to the Office a mitigation plan consistent with the  
40 other conditions of this site certificate. In preparing the mitigation plan, NWN shall  
41 consult with SHPO, the Office, and other appropriate parties.  
42

43 7) On properties to which NWN has been denied access prior to issue of the site  
44 certificate, NWN shall engage a qualified archeological inspector to look for and  
45 analyze artifacts, and shall comply with state law regarding these resources, if found.  
46

1 *Public Services Standard*

- 2
- 3 1) NWN shall obtain all required permits from the Oregon Department of Transportation  
4 for construction in public road right-of-way and shall conform to the Standard  
5 Specifications for Highway Construction, Oregon Department of Transportation,  
6 Section 00220 – Accommodation for Public Traffic. Ambulances, fire trucks and  
7 police and, in the Dairy Creek Valley area, private vehicles providing emergency  
8 transportation services, shall be afforded immediate passage. NWN will assure that a  
9 company representative is present on Dairy Creek Road during periods of complete  
10 closure of Dairy Creek Road.  
11
  - 12 2) NWN shall perform any road work under permit provisions provided by the affected  
13 county for work within the right-of-way along county roads. NWN shall develop and  
14 implement traffic control planning measures as part of the county permitting process.  
15 NWN will have overall responsibility for assuring that all contractors on the Project  
16 comply with these permit conditions. NWN shall ensure contractor compliance  
17 through construction inspection programs and construction management personnel.  
18
  - 19 3) NWN will provide a detailed traffic control plan for each phase of work, showing  
20 signs and cones, certification and use of flaggers, and proposed methods of lane  
21 closures. NWN will be responsible for safely accommodating public traffic lanes  
22 within the construction area. NWN shall submit these plans to the ODOT District  
23 manager prior to construction along state roads or to the county road department prior  
24 to construction along county roads.  
25
  - 26 4) NWN shall provide the county road department in each affected county with final  
27 construction drawings prior to start of construction in that county. Project  
28 construction shall be coordinated with the county’s future paving and culvert  
29 replacement programs.  
30
  - 31 5) NWN shall coordinate with school districts along the construction corridor to manage  
32 any potential school bus delays during project construction in months when school is  
33 in session.  
34

35 *Waste Minimization Standard*

- 36 1) NWN shall transport construction waste materials to an appropriate recycling facility  
37 or to an approved sanitary landfill for nonrecyclable goods. NWN shall collect scrap  
38 steel and welding rod for transportation to a recycling facility. Geotextile and straw  
39 bales shall be transported to an approved landfill.  
40
- 41 2) Water used for pressure testing shall be disposed of in a manner consistent with a  
42 WPCF permit issued by DEQ.  
43
- 44 3) NWN shall minimize the use of water by recycling water for the hydrostatic testing  
45 and directional drilling process. Bentonite used the drilling process shall be recycled  
46 to the extent practical.

1  
2 F. Conditions Related to Public Safety, OAR Chapter 345, Div. 24  
3 Under ORS 469.401(2), EFSC must impose conditions in the site certificate for the  
4 protection of public health and safety. Throughout the final order are conditions related  
5 to other decisional criteria that are ultimately intended to protect public health and safety.  
6 The following conditions protect public health and safety specifically with regard to  
7 EFSC standards for surface facilities related to underground natural gas storage and  
8 natural gas pipelines.  
9

- 10 1) NWN shall maintain a program to monitor the pipelines to ensure protection of public  
11 health and safety, including but not be limited to:  
12 a) pressure sensing devices positioned on the pipelines at Miller Station to relay  
13 information to both Miller Station and the Portland gas control centers.  
14 b) high and low pressure alarms monitored on a 24 hour basis to detect and locate  
15 areas where pressure variations may indicate abnormal conditions, and  
16 c) emergency response personnel on duty 24 hours a day, at Miller Station or in  
17 Portland, trained to respond to situations that require immediate attention.  
18  
19 2) The following specifications are deemed commitments by NWN:  
20 a) NWN shall specify pipe that meets the requirements for Class 3 locations as  
21 defined at 49 CFR 192.5 (March 15, 1999). NWN shall specify .375 inch wall  
22 thickness and minimum 52,000 lb. tensile strength in all sections of the pipeline.  
23 b) NWN shall perform 100% X-ray testing of all welds on the 24 inch pipeline.  
24 c) NWN shall maintain at least 24 inches of clearance between the pipeline and any  
25 underground structure, including the existing 16 inch line.  
26 d) NWN shall maintain a minimum of 48 inches of pipe cover in all locations, and  
27 60 inches in timberland or cultivated land.  
28 e) NWN shall hydrostatically test the pipeline at a minimum of 1080 psig in all  
29 sections.  
30 f) NWN shall use at least a 12 mil thick fusion bonded epoxy (FBE) coating on the  
31 pipeline, except that pipe used for road crossings shall have a 25 mil FBE coating.  
32  
33 3) Program Development Requirements: Prior to commencement of operations on the  
34 24-inch pipeline, NWN shall develop and obtain OOE approval for the following  
35 programs:  
36 a) Training of personnel responsible for patrolling the pipeline, with emphasis on  
37 early recognition of conditions indicating increased landslide hazard.  
38 b) Accelerated pipeline surveillance program with provisions for increased  
39 surveillance in extreme weather years. The program shall include  
40 recommendations by a geotechnical engineer for locations that warrant  
41 accelerated surveillance in excess of the periodic patrolling requirements for the  
42 pipeline in general.  
43 c) Training of personnel responsible for drainage control, with emphasis on  
44 identifying areas where pipeline installation could increase the drainage hazard  
45 and on implementing effective solutions.

- d) Continuing investigation of internal inspection devices (IID's) or "smart pigs," or other appropriate technologies with the capability to detect internal flaws, corrosion, and other pipeline defects, and development of criteria for determining the utilization of IID's, or any other appropriate technologies for detecting flaws, corrosion and other indications that the likelihood of pipeline failure may have increased. Such criteria shall, at a minimum, be consistent with federal and OPUC regulations.
- e) Development of criteria to identify the level at which NWN will excavate pipe sections for stress relief, based on strain gauge readings.

4) NWN shall design and construct the pipeline substantially in accordance with the representations in ASC Appendix B-1, ASC Exhibit BB and the NWN July 2001 response to OOE's May 2001 Request for Additional Information (questions on exhibit BB). In the event of any conflict between these commitments and other requirements, 49 CFR Part 192 shall prevail.

G. Permitting Requirements of Agencies Other than EFSC

The Council finds that the NWN Application complies with the requirements for the following permits, subject to conditions recommended in consultation with the affected agencies:

- 1) Removal/Fill permits from the Division of State Lands, subject to the conditions listed in section IV.D.1 of the Proposed Order (Attachment C of the final order).
- 2) Limited Water Licenses from the Water Resources Department, subject to the conditions listed in section IV.D.2 of the Proposed Order (Attachment C final order).
- 3) Water Pollution Control Facilities (WPCF) permits from Department of Environmental Quality, subject to the conditions listed in section IV.D.3 of the Proposed Order (Attachment C final order).

H. General Conditions

Severability and Construction. The Council adopts the following condition:

If any provision of this Site Certificate is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Site Certificate did not contain the particular provision held to be invalid. In the event of a conflict between the provisions contained in the Site Certificate and the Council's Order, the provision contained in this Site Certificate shall control.

1 Governing Law and Forum. The Council adopts the following conditions:  
2

- 3 (1) This Site Certificate shall be governed by the laws of the State of Oregon.  
4  
5 (2) Any litigation or arbitration arising out of this agreement shall be  
6 conducted in an appropriate forum in Oregon.  
7

8 I. General Conclusion

9 Based on its review of the record in this proceeding, the Council makes the following  
10 findings:  
11

- 12 (1) That the facility complies with the standards adopted by the Council  
13 pursuant to ORS 469.501;  
14 (2) That except for those statutes and rules for which the decision on  
15 compliance has been delegated by the federal government to a state  
16 agency other than the Council, the facility complies with all other Oregon  
17 statutes and administrative rules identified in the Project Order, as  
18 amended, as applicable to the issuance of a site certificate for the proposed  
19 facility adopted by the Council or enacted by statute; and,  
20 (3) That the facility complies with the statewide planning goals adopted by  
21 the Land Conservation and Development Commission, pursuant to ORS  
22 469.503(4).  
23

24 The Council concludes that NWN meets these requirements and that it should issue a site  
25 certificate for the South Mist Pipeline Extension.  
26

27 J. Order

28 Based on the above findings of fact, discussions and conclusions of law, the Council  
29 determines that it shall approve the Application for a Site Certificate for the South Mist  
30 Pipeline Extension and that the chairperson of the Council shall execute the Site  
31 Certificate in the form of the "Site Certificate for the South Mist Pipeline Extension."  
32 The Site Certificate for the South Mist Pipeline Extension is attached to this Order and  
33 incorporated by reference into this Order. The Council directs the Oregon Department of  
34 Environmental Quality to issue a Water Pollution Control Facilities permit to the  
35 Certificate Holder that is substantially in accordance with the conditions at section IV.D.3  
36 of the Proposed Order (Attachment C of this final order), it directs the Water Resources  
37 Department to issue limited water use licenses substantially in accordance with the  
38 conditions in section IV.D.2 of the Proposed Order (Attachment C of this final order),  
39 and it directs the Division of State Lands to issue a Removal/Fill Permit that is  
40 substantially in compliance with the conditions at section IV.D.1 of the Proposed Order  
41 (Attachment C of this final order).  
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Ordered this    day of March, 2003.

By: \_\_\_\_\_  
Dr. Roslyn Elms-Sutherland, Chair  
Oregon Energy Facility Siting Council

- ATTACHMENT A
- LAND USE ANALYSIS OF LOCAL REQUIREMENTS
- ATTACHMENT B
- COMPLIANCE WITH ORS 215.275 ANALYSIS
- ATTACHMENT C
- PROPOSED ORDER, ISSUED SEPTEMBER 19, 2002.
- ATTACHMENT D
- REVISED AGRICULTURAL IMPACT MITIGATION PLAN

**Notice of the Right to Appeal**

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.