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**OREGON DEPARTMENT OF ENERGY**

Regarding Statutes, Administrative Rules,  
and Other Requirements Applicable to the  
Proposed  
**KLAMATH FALLS BIOENERGY FACILITY**

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**PROJECT ORDER**

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**4BACKGROUND**

5 On April 5, 2010, Klamath Falls Bioenergy, LLC (KFB) submitted to the Oregon  
6Department of Energy (ODOE or the “Department”) a Notice of Intent (NOI) to file an  
7Application for a Site Certificate (ASC) for a proposed biomass-fired generating plant. The  
8proposed facility, named the Klamath Falls Bioenergy Facility, would be located within Klamath  
9County about two miles southwest of Klamath Falls, Oregon, and as described in the NOI, would  
10have a peak generating capacity of up to 38.5 megawatts (MW) of electrical power. The facility  
11will require a site certificate from the Oregon Energy Facility Siting Council (EFSC or the  
12“Council”).

13 On April 13, 2010, the Department issued a public notice of the NOI to the EFSC mailing  
14list and to adjacent property owners as defined at Oregon Administrative Rule (OAR) 345-020-  
150011(1)(f). The Department also published the notice on April 23 and 29, 2010, in the *Klamath*  
16*Falls Herald and News* newspaper. The public notice included announcement of a public  
17information meeting to be held May 5, 2010 in Klamath Falls, Oregon, and requested public  
18comments on the NOI by 5:00 pm on May 14, 2010. The meeting on May 5, 2010 was heavily  
19attended. Following the close of the public comment period on May 14, 2010 the Department  
20noted that not all stakeholders were adequately notified of the project. As a result, the  
21Department decided to re-notify stakeholders of another public comment period that would end  
22June 30, 2010. A public notice of the NOI was mailed to the EFSC mailing list and to adjacent  
23property owners as defined at Oregon Administrative Rule (OAR) 345-020-0011(1)(f), on May  
2425 and 26, 2010. The Department also published the notice in the *Klamath Falls Herald and*  
25*News* newspaper on June 6 and June 10, 2010. The public notice included announcement of a  
26public information meeting to be held June 15, 2010 in Klamath Falls, Oregon and requested  
27public comments on the NOI by 5:00 pm on June 30, 2010. On June 15, 2010, prior to the public  
28meeting commencement, Klamath Falls Bioenergy submitted a written change to the Notice of  
29Intent information. The change is as follows: in the NOI, Exhibit K, Land Use, Klamath Falls  
30Bioenergy stated that it would satisfy the Council’s land use standard by obtaining local land use  
31approval from Klamath County under ORS 469.501 (1)(a); the revised document stated they  
32have reconsidered and will instead be seeking a land use determination from the Council under  
33ORS 469.501(1)(b). This written change was signed by Klamath Falls Bioenergy’s Project  
34Manager, John Rivers. This change was announced at the June 15, meeting, which was heavily  
35attended. Many public comments were received by the end of the public comment period.  
36Public comments are discussed further in Section VII.

37 On or about April 23, 2010 KFB distributed the NOI to the reviewing agencies identified  
38by the Department. In accordance with OAR 345-020-0040, the NOI was sent with a

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1memorandum from the Department requesting comments from reviewing agencies no later than  
2May 14, 2010. At the close of the comment period the Department had received comments from  
3the Oregon Department of Agriculture, Oregon Parks and Recreation Department, Oregon  
4Department of Environmental Quality (Water Quality Section), Oregon Public Utilities  
5Commission, Klamath County Planning Department, and the Keno Fire District. Comments  
6received from reviewing agencies are also discussed in Section VII.

7 The Department issues this project order in accordance with OAR 345-015-0160, which  
8requires the Department to specify the state statutes, administrative rules, and local, state, and  
9tribal permitting requirements applicable to the construction and operation of the proposed  
10facility (see Sections I through V). This project order specifies the analysis areas for the  
11proposed facility (Section VI) and discusses comments received by the Department from  
12reviewing agencies and members of the public that address matters within the jurisdiction of the  
13Council that the applicant shall consider and discuss in the ASC (Section VII). This project  
14order also includes sections concerning the expiration date of the Notice of Intent (Section VIII),  
15discussion of project order amendments (Section IX) and the applicant’s duty to comply with  
16applicable requirements (Section X).

17 Oregon Revised Statute (ORS) 469.401(4) provides that a site certificate issued by the  
18Council does not govern certain matters. This project order does not consider matters outside the  
19Council's jurisdiction. The applicant must nevertheless comply with all statutes, regulations, and  
20local ordinances applicable to the proposed facility.

21 As provided in ORS 469.330(4), the Department or the Council may amend this project  
22order at any time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms  
23used in this project order, except where otherwise stated or where the context indicates  
24otherwise.

25 Therefore, pursuant to ORS 469.330(3) and OAR 345-015-0160(1), the Department  
26issues this project order establishing the requirements for an ASC for the Klamath Falls  
27Bioenergy Facility.

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**PROPOSED FACILITY: KLAMATH FALLS BIOENERGY FACILITY**

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**PROJECT ORDER**

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**X. APPLICABILITY AND DUTY TO COMPLY.....25**

**3I. Statutes, Administrative Rules, And Related Permit Requirements Applicable To The Proposed Facility**

This section identifies the Oregon statutes and administrative rules that KFB must address in the ASC, and related state and federal permits and approvals.

**(a) 7Energy Facility Siting Council**

**Statute and Rule References:** Statutes pertaining to the regulation of energy facilities, starting at ORS 469.300, and administrative rules in OAR Chapter 345, including the general provisions of Division 1 and the requirements of Divisions 21, 22, 24, 26 and 27 (as discussed further below).

**Permit:** An energy facility site certificate is required before construction or operation.

**Discussion:**

OAR Chapter 345, Division 21 (Application for Site Certificate)

See Section V for a discussion of specific information to be included in the ASC per the requirements of OAR 345-021-0010.

OAR Chapter 345, Division 22 (General Standards for Siting Facilities)

All general standards in OAR Chapter 345, Division 22, apply to the proposed facility.

OAR Chapter 345, Division 24 (Specific Standards for Siting Facilities)

Specific standards addressed in OAR Chapter 345, Division 24, apply to the proposed facility, including: Siting Standards for Transmission Lines (OAR 345-024-0090).

OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities)

If the Council issues a site certificate for the proposed facility, the certificate holder must implement a compliance plan, as described in OAR 345-026-0048 and periodically must submit reports as described in OAR 345-026-0080.

OAR Chapter 345, Division 27 (Site Certificate Conditions)

The site certificate will contain the mandatory conditions, applicable site-specific conditions, and monitoring conditions described in OAR 345-027-0020, -0023 and -0028.

**(b) Oregon Department of Agriculture, Plant Division — Native Plant Conservation Program**

**Statute and Rule References:** ORS Chapter 564 (Wildflowers; Threatened or Endangered Plants); and OAR Chapter 603, Division 73 (Plants: Wildflowers and Endangered, Threatened, and Candidate Species).

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**Permit:** None required.

**Discussion:** The Oregon Department of Agriculture (ODA) provides technical review and recommendations regarding compliance with the Council’s threatened and endangered species standard (OAR 345-022-0070) as it relates to plant species.

OAR 603-073-0070 contains the state list of endangered and threatened plant species. OAR 603-073-0080 gives ODA the authority to designate candidate plants. If KFB finds any state-listed threatened or endangered plant species that may be affected by the proposed facility, KFB must address the requirements of OAR 603-073-0090(5)(d)(A)-(E) in the ASC.

KFB should include in its ASC a list of both state- and federally-listed endangered, threatened, and candidate plant species that have potential to occur in the analysis area. KFB should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species maintained by the Oregon Natural Heritage Program.<sup>1</sup>

KFB should include in its ASC a description and the results of a field survey for the listed plant species. The survey must be conducted by a person with expertise in field botany, plant taxonomy and biological conservation. The survey should be conducted during the time of year when it is possible to identify any listed plants (usually when these plants are in flower or fruit). The field survey report should include written descriptions of the survey methods and areas surveyed. KFB should consult with the Oregon Department of Agriculture, Native Plant Conservation Program, regarding field survey methods, appropriate survey seasons, qualifications of field survey personnel, and the information to be included in the field survey report.

**(c) Oregon Department of Environmental Quality — Air Quality Division**

**Statute and Rule References:** 40 CFR Part 72 (Acid Rain Permits Regulation); ORS Chapters 468A (Air Quality); OAR Chapter 340, Division 216 (Air Contaminant Discharge Permits); Division 218 (Oregon Title V Operating Permits; Division 224 (Major New Source Review)

**Permits:** Air Contaminant Discharge Permit (ACDP), Prevention of Significant Deterioration (PSD) Permit, Federal Operating Permit (Title V), and Acid Rain Permit (Title IV)

**Discussion:** The air quality permit program is delegated by the US Environmental Protection Agency to the Oregon Department of Environmental Quality (DEQ). The Council does not have jurisdiction for determining compliance with the applicable law. However, the Council may rely on the determinations of compliance and the conditions in federally delegated permits in making its

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<sup>1</sup> OAR 345-022-0070 applies only to state-listed plant and animal species. Nevertheless, OAR 345-021-0010(1)(q) requires applicants to consider plant and animal species listed as endangered or threatened under both state and federal law. This requirement applies because the Council, in making its decision, must be mindful of possible adverse impacts to federally listed species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.

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determination about whether other standards and requirements under Council jurisdiction are met. Under OAR 345-021-0000(7), the Department shall not find an ASC complete unless the applicant has submitted one copy of all of its federally delegated permit applications. In addition, as described in OAR 345-021-0000(7), before the Department may find the ASC complete, KFB must submit to the Department a letter or other indication from DEQ stating that DEQ has received the permit applications from KFB, identifying any additional information DEQ is likely to need from KFB based on DEQ’s review of the application as submitted, and estimating the date when DEQ will complete its review and issue its permit decision. This condition applies to the ACDP or PSD permit. KFB must submit the Title V Federal Operating Permit and Acid Rain Permit, if applicable, applications to DEQ within one year after the facility begins operation.

In addition to the air quality requirements listed above, the Council may request additional information concerning air quality impacts if the information provided in obtaining the appropriate air quality permits is insufficient to determine compliance with other standards (e.g. 345-022-0040 Protected Areas). Transport of air quality emissions can lead to both near field and distant impacts that affect both human health, the environment, and visibility. The NOI does not specify the potential emission rates from the proposed facility. Without this information, ODOE is unable to determine what type of air quality permit would be required for construction and operation of the proposed facility. Because the type of air quality permit that would be required for construction and operation of the proposed facility cannot be ascertained, the level of air quality analysis that would be required by the DEQ with respect to the required air quality permit remains unclear. Depending upon the type of air quality permit the applicant must obtain from the DEQ, the applicant must include in the ASC sufficient information to enable the Council to determine whether its energy facility siting standards have been met.

The proposed facility will be located outside Klamath Falls, Oregon. Parts of the County and City are “maintenance” areas for carbon monoxide and PM<sub>10</sub> and non-attainment for PM<sub>2.5</sub>, meaning that they have not consistently met the National Ambient Air Quality Standards (NAAQS). It is believed that the facility will be outside of these areas, in a part of the County that is in attainment of the NAAQS. If the facility is designed with a “potential to emit,” as defined in OAR 340-200-0020, for any regulated pollutant that would define the facility as a “federal major source,” as defined in OAR 340-200-0020, the DEQ would require the facility to obtain a Prevention of Significant Deterioration permit. Regardless of the type of air quality permit the applicant seeks, DEQ will require the applicant to prepare an air quality analysis for determining whether the ambient air quality standards and PSD increments will be exceeded in Class I and Class II areas as described in OAR 340-204-0050. For a PSD permit application, the applicant will also be required to include an Air Quality Related Values (AQRV) analysis for Class I areas as described in OAR Chapter 340, Division 225. For gas fired electric generating facilities subject to major source review, the Council has found that the standards for siting energy facilities (OAR Chapter 340, Division 22) that could be adversely

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affected by air emissions from the proposed facility will be met if the applicant applies for and receives a PSD air quality permit through the DEQ.

If the applicant were to propose a facility with a “potential to emit” below “federal major source” levels, a PSD permit would not be required. However, a non-PSD Air Contaminant Discharge Permit would be required. Although the DEQ would not require AQRV analysis for such an air quality permit, ODOE will require this analysis as part of the ASC to ensure that the standards for siting energy facilities (OAR Chapter 340, Division 22) have been met. In particular, the AQRV analysis should show that the facility will not adversely affect Class I areas as those areas are defined by DEQ. Also, the Council has previously relied on the DEQ major source review to find compliance with its Protected Area Standard, OAR 345-022-0040. Therefore, regardless of what DEQ permitting path applies, the ASC should contain sufficient analysis of air quality impacts for the Council to determine if the air emissions would adversely affect the areas listed in its Protected Area standard.

The requirements of an AQRV analysis should be determined through consultation between the applicant and DEQ regardless of whether the analysis is required solely for the ASC, but should include visibility and deposition impact assessment. The AQRV and air quality analysis should include impacts from not only the boiler stack, but also cooling towers, fugitive road dust and fuel and ash handling, if fuel or ash handling is intended to be performed in unenclosed areas. Any other sources not clearly defined in the NOI may also require inclusion.

The U.S. EPA has recently issued proposed Maximum Achievable Control Technology (MACT) rules for hazardous air pollutants (HAPs) that may affect this project if promulgated in the fourth quarter of 2010. These rules, known to apply to major and area source Industrial, Commercial, and Institutional Boilers and Process Heaters may require additional pollution control equipment not identified in the NOI. Since the emission rates of HAPs from the boiler are not specified in the NOI, it is unknown whether these rules will be applicable. If these rules are applicable, the ASC must identify the pollution control equipment that will be installed in order to comply and provide details about any potential impacts of waste streams from these devices.

**(d) Oregon Department of Environmental Quality — Water Quality Division**

**Statute and Rule References:** ORS Chapter 468B (Water Quality); OAR Chapter 340, Divisions 40 (Groundwater Quality Protection), 45 (Regulations Pertaining To NPDES and WPCF Permits), 48 (Certification of Compliance with Water Quality Requirements and Standards), and 71 (Onsite Wastewater Treatment Systems).

**Permits:** National Pollutant Discharge Elimination System (NPDES), Section 401 Water Quality Certification, Water Pollution Control Facilities (WPCF), and onsite wastewater system permits.

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**Discussion:**

OAR Chapter 340, Division 45 (NPDES and WPCF Permits)

In accordance with OAR 345-021-0000(7), KFB must submit to the Department one copy of all applications for federally-delegated permits (including NPDES permits). The applicant must also provide a letter or other indication from the Oregon Department of Environmental Quality (DEQ) stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency’s review of the application as submitted, and estimating the date when the agency will complete its review and issue a permit decision.

The U.S. Environmental Protection Agency has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for construction and operation activities. The Council does not have jurisdiction over the federally-delegated NPDES permit, but the Council may rely on the determinations of compliance and the conditions in the federally-delegated permit in making its determination about whether other standards and requirements under the Council’s jurisdiction are met.

The NOI states that the facility will have an average of 100,000 gallons per day of process wastewater. If a WPCF permit is required for a process wastewater evaporation pond, it is a state permit that is under Council jurisdiction. Regulations pertaining to WPCF permits are in OAR Chapter 340, Division 45. KFB must include in the ASC all information that would otherwise be required by DEQ in an application for the permit. The WPCF permit application must include data and calculations used to determine the most efficient size and location of a process wastewater evaporation pond.

OAR Chapter 340, Division 48 (Certification of Compliance with Water Quality Requirements and Standards)

If a Section 404 Permit is needed from U.S. Army Corps of Engineers for the discharge of dredge or fill material in Oregon’s waters, a Section 401 Water Quality Certification must be granted by DEQ before a Section 404 permit may be issued. If a Section 401 Water Quality Certification is required, it is a state permit under Council jurisdiction. KFB must include in the ASC an itemized demonstration of each applicable provision in OAR 340-048-0020. If the certification is needed, the Council will make the issuing decision in consultation with the DEQ.

OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)

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The NOI states that the facility will discharge up to 1,000 gallons of sanitary waste per day to an onsite septic system. Such discharges may require a WPCF permit from DEQ. In such event, KFB must first verify that the site is suitable for an onsite sewage disposal system by applying to DEQ or its designated agency for a site evaluation of groundwater and soil conditions. In the ASC, KFB should provide information demonstrating that the proposed septic system is exempt from the WPCF permit requirement or, if it is not exempt, that it meets the requirements for a permit.

**(e) Oregon Department of Environmental Quality – Land Quality Division**

**Statute and Rule References:** ORS Chapters 465 and 466 (Hazardous Waste and Hazardous Materials I and II); and OAR Chapter 340, Divisions 100 through 122 (Hazardous Waste Management).

**Permit:** None required.

**Discussion:** KFB must include in the ASC a list of all hazardous materials that potentially would be stored or used at the facility site during construction and operation. KFB must comply with DEQ regulations concerning the use of hazardous materials and the clean up and disposal of hazardous wastes. The requirement is incorporated in the general standard of review, OAR 345-022-0000.

The DEQ hazardous waste program implements requirements of the U.S. Environmental Protection Agency (EPA) and is a federally-delegated program. However, information on hazardous materials use and storage is important in determining the potential for spills that could adversely affect soils and potentially affect the cost and success of site restoration. A complete ASC would include sufficient information on plans and programs for storage of hazardous materials and management of hazardous waste for DEQ to comment on their adequacy.

**(f) Oregon Department of Environmental Quality — Noise Control Regulations**

**Statute and Rule References:** ORS 467.020 and ORS 467.030 (Noise Control); and OAR Chapter 340, Division 35 (Noise Control Regulations).

**Permit:** None required

**Discussion:** The proposed facility must comply with the noise control regulations for new industrial facilities. The requirement is incorporated in the general standard of review, OAR 345-022-0000.

KFB shall include a noise analysis in the ASC. The analysis must contain information to support a finding by the Council that the proposed facility would comply with the requirements of OAR 340-035-0035.

**(g) Oregon Department of Fish and Wildlife**

**Statute and Rule References:** ORS Chapter 496 (Application, Administration and Enforcement of Wildlife Laws); ORS Chapter 498 (ORS 498.301 through 498.346 —Screening and By-pass Devices for Water Diversions or Obstructions); ORS

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Chapter 506 (ORS 506.036—Protection and Propagation of Fish and ORS 506.109—Food Fish Management Policy); ORS Chapter 509 (ORS 509.140—Placing Explosives in Waters and ORS 509.580 through 509.910—related to Fish Passage); and OAR Chapter 635, Division 100 (Wildlife Diversity Plan) and Division 415 (Fish and Wildlife Habitat Mitigation Policy).

**Permit:** None required

**Discussion:**

OAR Chapter 635, Division 100 (Wildlife Diversity Plan)

The Oregon Department of Fish and Wildlife (ODFW) provides technical review and recommendations on compliance with Council standards. ODFW will base its review and recommendations on state wildlife policy and threatened and endangered species policy (Application, Administration and Enforcement of Wildlife Laws, see ORS 496.012 and ORS 496.171 - 192).

OAR Chapter 635, Division 100, provides authority for adoption of the state sensitive species list and the Wildlife Diversity Plan and contains the State list of threatened and endangered wildlife species. KFB should include in its ASC a list of both state-listed and federally-listed threatened and endangered wildlife species and State Sensitive Species that have potential to occur in the analysis area. KFB should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species published by the Oregon Natural Heritage Information Center.

KFB should include in its ASC a description and the results of a field survey for the listed wildlife species performed by qualified survey personnel during the season or seasons appropriate to the detection of these species. The field survey report should include written descriptions of the survey methods and areas surveyed. KFB should consult with ODFW regarding field survey methods, appropriate survey seasons and qualifications of field survey personnel.

OAR Chapter 635, Division 415 (Fish and Wildlife Habitat Mitigation Policy)

OAR Chapter 635, Division 415, classifies six habitat categories and establishes a mitigation goal for each category. KFB must identify the appropriate habitat category for all areas affected by the proposed facility and provide the basis for each category designation. The ASC should identify any impacts that project construction and operation will have on fish and wildlife habitat quality and quantity, and describe the actions that will be taken to mitigate for these impacts, consistent with the goals of the Mitigation Policy. These actions may include avoiding certain habitat areas, limiting the timing of construction to avoid sensitive time periods for wildlife, or compensation for unavoidable losses. The ASC should also describe how mitigation actions would be monitored and evaluated to ensure the success of mitigation.

**(h) Oregon Department of Geology and Mineral Industries**

**Statute and Rule References:** OAR 345-022-0020

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**Permit:** None required.

**Discussion:** The Department of Geology and Mineral Industries (DOGAMI) provides technical review and recommendations on compliance with the Council’s structural standard, OAR 345-022-0020. In its ASC, KFB must include a geotechnical report that includes, as a minimum, the information required by OAR 345-021-0010(1)(h). Also relevant is the information required by OAR 345-021-0010(1)(i). (See Section V of this project order for additional discussion concerning ASC requirements.)

**(i) 9Oregon Parks and Recreation Department**

**Statute and Rule References:** ORS 97.740 - 760(Indian Graves and Protected Objects); ORS 358.905 - 961 (Archaeological Objects and Sites); ORS 390.010 (Outdoor Recreation); ORS 390.235 (Archaeological Sites and Historical Material); and OAR Chapter 736, Division 51 (Archaeological Permits).

**Permit:** An archaeological permit may be required to conduct archaeological investigations of the site.

**Discussion:** The Oregon Parks and Recreation Department provides technical review and recommendations on compliance with Council standards.

The State Historic Preservation Office (SHPO) within the Oregon Parks and Recreation Department provides technical review and recommendations in reference to the Council’s Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090). The ASC should include an archaeological and cultural survey conducted by a qualified archaeologist. KFB should work as early as possible with SHPO to ensure that KFB provides required information in SHPO’s preferred formats.

**NOTE:** Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information should not be included in the text of ASC. Such information, including archaeological survey reports, should be provided separately only after consultation with the Department.

**(j) 29Oregon Department of State Lands — Removal-Fill Authorizations**

**Statute and Rule References:** ORS 196.800 - 990 (Removal of Material; Filling); and OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands).

**Permit:** A removal-fill permit is required if any removal or fill activities occur in streams designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) or 50 cubic yards or more of material is removed, filled or altered within a jurisdictional water of the State [OAR 141-085-0520(2) and (4)].

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**Discussion:** In Oregon, the removal fill permit is issued by the Department of State Lands (DSL) separately from the 404 permit issued by the U.S. Army Corps of Engineers. DSL will review a joint permit application (JPA) for compliance with DSL wetland mitigation requirements. Note that in some cases the DSL wetland mitigation success criteria may differ from and exceed those of the Corps.

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KFB should include information in the ASC to support a finding on whether a removal-fill permit is needed. KFB should consult with the Department of State Lands and obtain its concurrence, which may require a formal delineation of wetlands and waters of the State within the site boundary. If a removal-fill permit is needed, the ASC must include an itemized demonstration of each applicable provision of ORS 196.825 (Criteria for Issuance of a Permit) and OAR 141-085-0550 (Application Requirements for All Authorizations). If the permit is needed, the Council will make the issuing decision in consultation with the Department of State Lands.

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**(k) 15Oregon Water Resources Department — Water Rights/Adjudications Division**

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**Statute and Rule References:** ORS Chapters 536 through 540 (Water Resources/Water Rights); and OAR Chapter 690 (Water Resources Department).

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**Permit:** Water right.

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**Discussion:** The NOI states that water may be obtained from either Collins Timber or a new, onsite, private groundwater well. As a result, it is unknown whether a new water right will be required.

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KFB should include information in the ASC to support a finding of whether a water right is or is not required. The ASC must identify the sources of water to be used by the proposed facility during construction and operation, the water right under which the water would be provided, the quantity of water needed, and the means of disposal of all water discharges from the proposed facility.

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If a new water right or water right transfer is required, the ASC must include information to support a finding for issuance of a groundwater or surface water permit under ORS Chapter 537 (Appropriation of Water Generally) or transfer of a water use under ORS Chapter 540 (Transfer or Forfeiture of Water Rights), including a discussion and evaluation of all relevant factors, including those factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690, Divisions 310 (Water Right Application Processing) and 380 (Water Right Transfers). If a permit or transfer is needed, the Council will make the issuing decision in consultation with the Oregon Water Resources Department.

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**(l) 36U.S. Army Corps of Engineers**

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**Statute and Rule References:** OAR 345-048-0032

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**Permit:** Section 404 Permit is required for the discharge of dredged or fill material in Oregon’s waters.

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**Discussion:** If the project requires any dredge or fill of water bodies, KFB must submit to the Department one copy of an application for a federally-delegated Section 404 permit, in accordance with OAR 345-021-0000(7). The DSL (removal-fill permit) and the U.S Army Corps of Engineers (Corps) (Section 404 permit) use a joint application form. The applicant must also provide a letter or other indication from the Corps stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency’s review of the application as submitted, and estimating the date when the agency will complete its review and issue a permit decision.

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The Council does not have jurisdiction over the federally-delegated Section 404 permit, but the Council may rely on the determinations of compliance and the conditions in the federally-delegated permit in making its determination about whether other standards and requirements under the Council’s jurisdiction are met.

**15II. NATIVE AMERICAN TRIBES**

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**Statute and Rule References:** Not applicable

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**Permit:** None

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**Discussion:** The ASC should include evidence of consultation with affected tribes, including the Klamath Tribes, the Confederated Tribes of Siletz Indians, the Confederated Tribes of Warm Springs, the Confederated Tribes of Grand Ronde, and the Burns Paiute Tribe regarding archaeological and cultural sites and materials within the site boundary. The affected tribes provide technical review and recommendations in reference to the Council’s Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090).

**25III. APPLICABLE LOCAL GOVERNMENT ORDINANCES**

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**Statute and Rule References:** Applicable substantive criteria from the Klamath County code and comprehensive plan.

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**Permit:** Conditional Use Permit; Site Plan Review Permit; Site Evaluation Permit and an Installation Permit for the on-site sewage disposal system; Building Permits for structural, electrical, plumbing, and mechanical specialties; a Road Approach Permit (depending upon the results of the Traffic Impact Analysis).

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**Discussion:** In the NOI, KFB states that it intends to satisfy the Council’s land use standard by obtaining local land use approval from Klamath County under ORS 469.504(1)(a). The choice of land use path can be changed until the ASC is submitted. Once the ASC is submitted, the choice of land use path is fixed. If KFB demonstrates land use compliance through local review, the ASC should contain documentation from the City that all land use requirements have been met and that KFB has applied for any needed local permits.

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1 The plan reviews performed by the county building official are not part of the EFSC  
2 review, but any site certificate issued would be conditioned on proper application to the  
3 county for the building permits described above.

#### 4IV. OTHER CONSTRUCTION-RELATED REGULATIONS

5 If the Council issues a site certificate, the certificate holder must comply with  
6 construction-related regulations that apply to the proposed facility. As provided under  
7 ORS 469.401(4), the site certificate does not address these regulations.

#### 8V. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21

##### 9 OAR 345-021-0000 (General Requirements)

10 All requirements apply. KFB must submit the information required by OAR 345-021-  
11 0000, particularly the information in sections (6) and (7) regarding the status of non-  
12 federally-delegated and federally delegated permits.

##### 13 OAR 345-021-0010 (Contents of an Application)

14 The ASC should include the information described in OAR 345-021-0010(1), which  
15 requires the applicant to include in its ASC the information necessary to address each  
16 provision of the rules identified in this project order, as well as the information from 345-  
17 021-0010(2) and (3). Each of the paragraphs below indicates which provision(s) of OAR  
18 345-021-0010(1)(a) – (dd) will apply to the Klamath Falls Bioenergy Facility.

##### 19 **(a) Exhibit A – General Information about the Applicant**

20 Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of  
21 “participating persons, other than individuals.” “Person” is defined in OAR 345-  
22 001-0010(45). Include in the ASC information about all third-party entities  
23 (persons other than individuals) that are important to the facility.

##### 24 **(b) Exhibit B – General Information about the Proposed Facility**

25 All paragraphs apply except (A)(vii) and (viii). Paragraph (D) applies only if the  
26 transmission line associated with the Klamath Falls Bioenergy Facility meets the  
27 definition of an energy facility per ORS 469.300.

28 KFB must include a physical description and a description of the location of all  
29 components of the facility including, but not limited to, the boiler, the turbine  
30 generator buildings, outdoor heat recovery steam generators, cooling towers,  
31 water treatment building, indoor and outdoor fuel and ash storage piles, on-site  
32 fuel and ash loading areas, on-site fuel unloading areas, water tanks, control and  
33 administration building, retention or evaporation ponds, generators, auxiliary  
34 transformers, pollution control equipment, switchyard, access roads, road  
35 modifications, transmission lines, and interconnection facilities. KFB must  
36 describe any improvement or modification of existing structures, including roads.

37 The NOI states that the transmission line from the facility will be approximately  
38 1.5 miles in length to the substation. OAR 345-021-0010(1)(b)(D)(i) – (viii) is

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not applicable as long as the Klamath Falls Bioenergy Facility transmission line is less than 10 miles in length and will not cross more than one county jurisdiction.

**(c) Exhibit C – Location**

Maps included in Exhibit C should provide enough information for property owners potentially affected by the facility to determine whether their property is within or adjacent to the site. Major roads should be named. The ASC should include identification of lands enrolled in the Conservation Reserve Program and lands currently used for commercial agriculture. KFB should include maps drawn to a scale of 1 inch = 2,000 feet when necessary to show detail. Maps should indicate the “site boundary” as defined in OAR 345-001-0010(53).

**(d) Exhibit D – Organizational Expertise**

All paragraphs apply.

**(e) Exhibit E – Permits**

All paragraphs apply.

**(f) Exhibit F – Property Owners**

The NOI states that the facility will be located outside of the Klamath Falls urban growth boundary in an area zoned Heavy Industrial (IH). Accordingly, the distance in paragraph (B) of OAR 345-021-0010(f) applies (250 feet from the site boundary).

**(g) Exhibit G – Materials Analysis**

All paragraphs apply. See discussion in Section I.D (Oregon Department of Environmental Quality) of this project order regarding the importance of listing hazardous materials used and stored at the facility, or at temporary access and material staging areas. ODOE also uses the materials analysis to identify any hazardous materials whose storage could affect site restoration.

KFB must identify any chemicals that may be used in the cooling towers and/or in the process wastewater evaporation ponds. If a solid precipitate is created or if any other liquids or solids requiring disposal will accumulate (such as in the evaporation ponds, or material generated during maintenance activities), KFB must provide information concerning the storage, treatment, and/or disposal of the material. If KFB plans to send waste materials offsite to a licensed facility for treatment and/or disposal the ASC must describe the method that will be used to demonstrate that the material will not pose a threat to human health and the environment during storage or transport.

**(h) Exhibit H – Geology**

All paragraphs apply except OAR 345-021-0010(h)(E).

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The ASC should include all results of field and laboratory investigations and any other geotechnical and geologic hazard site evaluations that have been conducted. A thorough ground shaking amplification, liquefaction, and lateral spread analysis with all of the calculations, methodologies, and recommendations based on this site-specific analysis will be required.

**NOTE:** OAR 345-021-0010(1)(h), paragraphs (A), (F)(i), and (F)(iv), each contain references to potentially outdated guidelines and codes. The applicant should consult directly with the Oregon Department of Geology and Mineral Industries regarding the most current standards the applicant should use in preparing information for the ASC. The ASC should note the codes and guidelines used to prepare information in Exhibit H and provide an explanation if any are different from those cited in the Council’s rules.

**(i) Exhibit I – Soils**

All paragraphs apply.

KFB should include information describing the impact of construction and operation of the proposed facility on soil productivity in farm zones. This includes analysis of deposition impacts from cooling tower drift and combustion pollutants. KFB should also provide detailed descriptions of how erosion and runoff will be controlled during construction and operation. Describe all measures proposed to maintain soil productivity during construction and operation. KFB should consult with local farmers, landowners, and soil conservation districts regarding mitigation of impacts to farmland. Erosion control should also be emphasized due to the proximity of the Klamath River and the location of the Miller Island State Wildlife Area as well as the Lower Klamath National Wildlife Refuge.

Biomass facilities generate ash and potentially wastes associated with pollution control equipment on the boiler. The applicant should describe the methods of disposal for this material. If land application is a potential use of the material, the applicant should describe the impact to soils and any constituents of concern.

Runoff from outdoor storage piles of wood debris are typically acidic and may impact soils. Additionally, runoff of outdoor storage piles of boiler ash are typically basic and may contain concentrated contaminants that may impact soils. The applicant should describe the long-term impacts of outdoor storage of materials on soils at the site.

**(j) Exhibit J – Jurisdictional Waters**

All paragraphs apply.

**NOTE:** OAR Chapter 141, Division 85 (“Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands”) was recently revised. The citations in OAR 345-021-0010(1)(j) to rules in Division 85 of OAR Chapter 141 are no longer valid. For example, reference to OAR 141-085-0010 should now be 141-085-0510 (Definitions). The citation to OAR 141-085-0018 should now be to OAR 141-085-0520. The applicant should consult directly with the Oregon Department of State Lands if there are any questions regarding the applicable regulations.

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**(k) Exhibit K – Land Use (Statewide Planning Goals)**

The NOI stated that KFB would seek local land use approval from Klamath County under ORS 469.504(1)(a). On June 15, 2010 Klamath Falls Bioenergy submitted a written change to the Notice of Intent information revising this election and stating that KFB will be seeking a land use determination from the Council under ORS 469.501(1)(b). KFB may change this election, but the election is final when the ASC is submitted.

**(l) Exhibit L – Protected Areas**

All paragraphs apply.

**(m) Exhibit M – Financial Capability**

All paragraphs apply.

**(n) Exhibit N – Need for the Facility**

Exhibit N does not apply.

**(o) Exhibit O – Water Use**

All paragraphs apply.

**(p) Exhibit P – Fish and Wildlife Habitat**

All paragraphs apply.

**(q) Exhibit Q – Threatened and Endangered Species**

All paragraphs apply.

**(r) Exhibit R – Scenic Resources**

All paragraphs apply. Include visual depictions of the project’s impact on scenic resources within the analysis area, if visual depictions are available.

**(s) Exhibit S – Historic, Cultural and Archaeological Resources**

All paragraphs apply.

**(t) Exhibit T – Recreation**

All paragraphs apply.

**(u) Exhibit U – Public Services**

All paragraphs apply. Include an analysis of estimated facility-related traffic during construction and operation and the potential impact on traffic safety. Discuss transportation of heavy equipment and shipments of facility components during construction, including proposed transportation routes, anticipated traffic volume and potential damage to public roads.

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**(v) Exhibit V – Solid Waste and Wastewater**

All paragraphs apply.

Include in this exhibit information about obtaining a hazardous waste determination for excavated soils.

If process wastewater is disposed using land application, the ASC must also include data and calculations used to determine the most efficient size and location of the land application area, i.e., land application area that will achieve the purpose of disposing of process wastewater giving due consideration to conservation of land, soil and protection of surface and groundwater resources. If process wastewater is disposed using an evaporation pond, the ASC must include data and calculations used to determine the most efficient size of any process wastewater evaporation pond, i.e., pond size that will achieve the purpose of disposing of process wastewater giving due consideration to conservation of the water resource, including a description of precipitate or other solid waste that would be generated by operation of a process wastewater evaporation pond.

**(w) Exhibit W – Facility Retirement**

All paragraphs apply. Explain and justify the methodology used to estimate retirement costs.

**(x) Exhibit X – Noise**

All paragraphs apply. The ASC should include documentation of any waivers that KFB needs if the predicted noise levels at an affected property exceed the ambient degradation standard. All noise generating sources associated with site operations must be considered including, but not limited to, machinery and vehicle operations.

**(y) Exhibit Y – Carbon Dioxide Emissions**

Exhibit Y does not apply.

**(z) Exhibit Z – Cooling Tower Impacts**

All paragraphs apply.

**(aa) Exhibit AA – Electric and Magnetic Fields**

All paragraphs apply to any transmission line, regardless of size, that is a related or supporting facility, including collector lines.

**(bb) Exhibit BB – Other Information**

Any information requested in this project order that is not addressed in any other exhibit.

**(cc) Exhibit CC – Other Law**

Exhibit CC applies.

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**(dd) Exhibit DD – Specific Standards**

Paragraph (C) applies. Per Section I(a) of this project order, the applicant should include in Exhibit DD information to support findings by the Council that the proposed facility complies with the Siting Standards for Transmission Lines (OAR 345-024-0090).

**7VI. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

8 The analysis areas are the minimum areas that KFB must study for potential impacts from  
9 the construction and operation of the proposed facility. The analysis areas described in  
10 this project order do not limit the applicant’s responsibility to assess the potential impacts  
11 of the facility. They are the areas in which significant adverse impacts from the proposed  
12 facility are likely to occur. If significant impacts could occur beyond the analysis areas  
13 described here, then KFB must assess those impacts in the ASC and show how the  
14 facility would comply with the applicable standard with regard to the larger area where  
15 impacts could occur.

16 For all potential impacts, the analysis area includes all the area within the site boundary.  
17 In addition to the definition of “site boundary” in OAR 345-001-0010(53), the site  
18 boundary includes temporary laydown and staging areas, turn-around areas and  
19 equipment transport corridors (if required). In its ASC, KFB must describe the site  
20 boundary and provide a map showing the proposed site boundary.

21 The analysis areas are included in the following table:

Affected Standard or Resource	Exhibit	Analysis Area
Structural Standard	Exh. H	The area within the site boundary, notwithstanding the distances related to an assessment of seismic hazards required by OAR 345-021-0010(1)(h).
Soils	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary, and wetland areas hydrologically connected to wetlands within the site boundary.
Land Use	Exh. K	To be determined by the Klamath County Planning Department. If the applicant decides to seek a Council determination of facility compliance with statewide planning goals, the study area shall be within the site boundary and one-half mile from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary and within one-half mile from all ground disturbing activities anticipated during construction, unless otherwise described in an ODFW- and ODOE-approved protocol.

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Affected Standard or Resource	Exhibit	Analysis Area
Threatened and Endangered Species	Exh. Q	The area within the site boundary and 5 miles from the site boundary.
Scenic and Aesthetic Values	Exh. R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary.
Recreational Opportunities	Exh. T	The area within the site boundary and 5 miles from the site boundary.
Public Services	Exh. U	The area within the site boundary and 10 miles from the site boundary, except that the ASC should also include an evaluation of impacts to the nearest health care facilities, which are in the city of Klamath Falls.

**1VII. COMMENTS FROM REVIEWING AGENCIES AND THE PUBLIC**

**2 (a) Public Comments**

3 In addition to the applicable statutes, rules, and land use requirements listed in  
4 this Project Order, the ASC must address issues arising from public comments following  
5 the informational meeting on the NOI (OAR 345-015-0130). Pursuant to OAR 345-015-  
6 0160(1)(g), the issues raised in public comments are summarized in this Project Order.

7 ODOE heard public comments and concerns at public meetings held on May 5  
8 and June 15, 2010 in Klamath Falls. The public comment period on the NOI extended  
9 from the date the NOI was received until June 30, 2010. ODOE received over 80  
10 comments electronically and via US Mail.

11 Because there was considerable duplication among comments, the ODOE has  
12 identified in the summary below the issues raised that KFB should address in its ASC.  
13 Not all issues and questions raised in the public comments are matters within the EFSC  
14 jurisdiction; however, the ODOE expects KFB to work directly with the public and with  
15 local governments to address comments to the extent practical. The enclosed summary  
16 below is not a substitute for the original comments, nor do they represent the opinions of  
17 the ODOE or the EFSC.

**18 1. Comments Related to Impacts to Agricultural Land**

- 19 • There will be negative impacts to nearby agricultural lands.
- 20 • The water usage of the facility will negatively impact availability  
21 of water to farmers in the Klamath Basin.

**22 2. Comments Related to Environmental and Cultural Impacts**

- 23 • There will be negative impacts to air quality, from the proposed  
24 facility as well as increased diesel truck traffic (PM2.5).
- 25 • The facility will emit toxic chemicals.

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- There will be air pollution from ash and sawdust.
- The facility is adjacent to a non-attainment area for PM2.5; increased truck traffic will contribute to this existing problem.<sup>2</sup>
- There will be negative impacts to migratory wildlife, including birds and deer.
- There will be negative impacts to nearby Miller Island State Wildlife refuge.
- There will be negative impacts to water quality.
- There is potential for spread of noxious weeds.
- Slash removal may have negative impacts on forest habitat.
- There will be impacts to six wildlife refuges in the Klamath Basin.
- The facility's water use will reduce flows in the Klamath River.
- Water pollution from the facility will negatively impact birds and bird habitat.
- There will be negative impacts to salmon habitat.
- Local tribal entities should be involved with this project.
- The facility is located on a Native American grave site.
- There is a historic gravesite on the proposed project site.
- The proposed facility location is within a wetland or floodplain.
- The facility will pollute the Klamath River.
- Light pollution from the facility will affect wildlife.

### **3. Comments Related to Waste**

- Wastewater from the site may not be treated and disposed of appropriately, causing water pollution.
- Will the facility be able to properly dispose of the ash generated?
- Disposal of facility waste will affect the Klamath River and adjacent wildlife area.

### **4. Comments Related to Public Services, Safety and Wellbeing**

- NO<sub>x</sub>, SO<sub>x</sub> and CO<sub>2</sub> emissions will decrease air quality and negatively impact residents' health.
- There needs to be a plan for traffic control.
- There will be negative impacts to groundwater supply; availability of water to residents' wells will be affected.
- Additional traffic on Hwy 66 will present a safety hazard.
- Slash piles stored at the facility will be a fire hazard.

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• There will be traffic safety impacts/congestion on Hwy 66 from increased truck traffic.

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• There needs to be a plan for fire protection.

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• The slash piles will present a safety hazard.

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• The facility will create noxious odors.

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• The proposed baghouse is a fire/explosion hazard.

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• The cooling tower is a possible source of Legionnaire's disease.

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**5. Comments Related to Noise**

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• Noise from the facility will have a negative impact on nearby properties.

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• There will be noise impacts to neighboring properties from increased truck traffic serving the facility.

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• There will be negative impacts to wildlife from increased noise from facility operation.

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**6. Comments Related to Economic Development**

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• The facility will decrease tourism and cause negative economic impacts to the community.

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• The facility will have negative impacts on commercial fishing on the Oregon coast.

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**7. Comments Related to Aesthetic and Scenic Values**

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• Fuel/slash storage piles will cause visual impacts.

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• The proposed facility will adversely affect views.

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• There will be light pollution from the proposed facility.

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• There will be visual impacts to the Volcanic Legacy National Scenic Byway.

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• A massive steam cloud from the facility will cause visual impacts.

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• The proposed facility will ruin the scenic and aesthetic value of the basin.

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• Above ground steam transmission pipes will negatively affect the surrounding area.

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**8. Comments Suggesting Alternate Locations**

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• The old Weyerhauser Mill Site is a better location for this project.

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• There are better locations for this project in Chiloquin.

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• Bly Mountain is a possible alternative location for this plant.

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**9. Other Comments**

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• This company does not have a track record building biomass plants.

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• What is this company's safety record?

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• The proposed facility is being built on a fault line.

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- The proposed facility will cause an increase in soil erosion.
- The project site is in a residential area, uses are incompatible.
- Where will the facility get the large amount of water required?

**10. Other Comments Without Standards**

- Increased traffic will result in increased public road maintenance costs.
- There are concerns about decreased property values.
- The operation of the facility may prevent locals from burning wood for heat.
- Does the proposed fuel source meet the intent of Oregon SB 838 and qualify for the renewable portfolio standard provided by SB 838?

**(b) Reviewing Agency and Other Comments**

The Department has received comments on the Klamath Falls Bioenergy Facility NOI from the Klamath County Planning Department, the Parks and Recreation Department, the Keno Fire District, the DEQ Water Quality Division, the Oregon Public Utility Commission, and the Oregon Department of Agriculture. These comments have been sent to KFB for their consideration in development of a preliminary ASC, as required by OAR 345-015-0140. KFB should conduct an in-depth review of agency comments and work closely with each commenting agency prior to the submittal of the preliminary ASC. The ASC must include sufficient information for the Council to determine the adequacy of the applicant’s response to significant comments from reviewing agencies.

It should be noted that some agencies did not comment on the NOI. However, these agencies may comment on the ASC and therefore the applicant is encouraged to discuss the project with all applicable agencies to ensure a complete ASC is submitted.

**27VIII. EXPIRATION DATE OF THE NOTICE OF INTENT**

In accordance with OAR 345-20-0060, the Klamath Falls Bioenergy Facility NOI expires on April 5, 2012, unless KFB submits a petition to the Council for an extension not less than 45 days before the expiration date. If KFB does not submit an ASC before the expiration of the NOI, then KFB must submit a new NOI to satisfy ORS 469.330.

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**33IX. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS**

The Council or the Department may amend this project order at any time [ORS 35469.330(4)]. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility [ORS 469.503(3)].

Under OAR 345-015-0190(5), when the Department determines the ASC contains adequate information for the Council to make findings on all applicable Council standards, the

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1Department may find the ASC complete, regardless of whether the ASC contains all information  
2required under OAR 345-021-0000 and OAR 345-021-0010. Notwithstanding a determination  
3that an ASC is complete, the Department may require additional information from the applicant  
4if the Department identifies a need for that information during its review of the ASC [OAR 345-  
5015-0190(9)].

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**7X. APPLICABILITY AND DUTY TO COMPLY**

8 Failure to include an applicable statute, rule, ordinance, permit or other requirement in  
9this project order does not render that statute, rule, ordinance, permit or other requirement  
10inapplicable, nor in any way relieves applicant from the duty to comply with the same.

**11 OREGON DEPARTMENT OF ENERGY**

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14[Original *signed*]

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16\_\_\_\_\_  
16Thomas M. Stoops, Siting Manager

17Oregon Department of Energy

18Date of Issuance: \_\_\_\_\_