

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Request for Amendment #2 of
the Site Certificate for the Golden Hills Wind Project

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FINAL ORDER ON
AMENDMENT #2

January 30, 2015

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1 **I. INTRODUCTION**
2

3 The Oregon Energy Facility Siting Council (Council) issues this final order in accordance with ORS
4 469.405 and OAR 345-027-0070. This final order addresses a request by Golden Hills Wind
5 Farm, LLC (Golden Hills or certificate holder), formerly a wholly owned subsidiary of BP Wind
6 Energy North America Inc. (BP), for amendment of the Site Certificate for the Golden Hills Wind
7 Project¹ (Site Certificate) and a transfer request. The requested transfer will not change the
8 named owner of the site certificate but will reflect a change in the ownership structure of the
9 certificate holder.² The certificate holder, Golden Hills, has been sold by its parent company, BP,
10 to Orion Golden Hills Wind Farm, LLC (Orion or transferee), which is owned by Orion Renewable
11 Energy Group, LLC (Orion Renewable). Golden Hills, the current certificate holder, and Orion,
12 the transferee, submitted both the Transfer and Amendment requests.
13

14 **I.A. Name and Address of Certificate Holder**
15

16 Golden Hills Wind Farm, LLC
17 700 Louisiana Street, 33rd Floor
18 Houston, TX 77002
19

20 Individuals Responsible for Submitting the Request:
21

22 Elaine Albrich
23 Stoel Rives LLP
24 900 SW Fifth Avenue, Suite 2600
25 Portland, OR 97204
26

27 Reid Buckley
28 Orion Golden Hills Wind Farm, LLC
29 Orion Renewable Energy Group, LLC
30 155 Grand Avenue, Suite 706
31 Oakland, CA 94612
32

33 Michael Rigo
34 BP Wind Energy North America Inc.
35 700 Louisiana Street, 33rd Floor
36 Houston, TX 77002
37

38 **I.B. Description of the Facility**
39

¹ The Energy Facility Siting Council issued the Site Certificate for the Golden Hills Wind Project on June 18, 2009.
² OAR 345-027-0100(1)(a) states that “A transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility.”

1 The Oregon Energy Facility Siting Council (Council) issued the site certificate for The Golden Hills
2 Wind Project (facility) on June 18, 2009, authorizing a wind-energy generation facility with
3 electrical capacity of up to 400 megawatts. The Council approved an amendment to extend the
4 construction deadlines on May 11, 2012. As approved and amended, the facility consists of up
5 to 267 wind turbines as well as related and supporting facilities located within permitted survey
6 corridors on approximately 30,000 acres of privately owned, Exclusive Farm Use-zoned land
7 both east and west of Highway 97, between the cities of Wasco and Moro in Sherman County,
8 Oregon.³

9
10 **II. THE AMENDMENT PROCESS**

11
12 **II.A. Description of the Proposed Amendments**

13
14 **II.A.1. Summary of Proposed Changes to Site Certificate**

15
16 Golden Hills requests a second amendment to the Site Certificate to extend the deadlines for
17 beginning and completing construction by two years. If the amendment is approved, the
18 deadline for beginning construction would be extended from June 18, 2014 to June 18, 2016;
19 and the deadline for completing construction would be extended from June 18, 2016 to June
20 18, 2018. Golden Hills did not satisfy the requirement in OAR 345-027-0030 to submit the
21 construction extension request at least six months before the construction commencement
22 deadline so must demonstrate “good cause” for the delay in submitting the request.

23
24 In addition, the certificate holder and Orion request a transfer. While the site certificate will still
25 be held by Golden Hills, Golden Hills has a new parent company. Golden Hills Wind Farm, LLC is
26 now owned by Orion Golden Hills Wind Farm, LLC.

27
28 The certificate holder submitted a red-line version of the sections of the Site Certificate where
29 the certificate holder is proposing changes in its Request for Amendment dated June 13, 2014
30 (with new text shown with underline and deletions shown with strikethroughs), attached as
31 Attachment A.

32
33 **II.A.2. Changes to the Site Certificate**

34
35 The Council approves the requested amendment to extend the deadlines for beginning and
36 completing construction; and approves the requested transfer.

37
38 The Council adopts the certificate holder’s proposed changes, except as specifically modified,
39 and subject to the conditions presented in the amended site certificate, attached as
40 Attachment B.

41

³ *Application for Site Certificate* at B-1, August 10, 2007.

1 **II.B. Procedural History**

2
3 The Council issued the Final Order on the Application for Site Certificate for the Golden Hills
4 Wind Project on May 15, 2009. The Site Certificate became effective upon execution on June
5 18, 2009. On December 8, 2011 the Oregon Department of Energy (department) received the
6 Request for Amendment #1 to the Site Certificate. The request was to extend the construction
7 deadlines by two years. The Council issued the Final Order approving Amendment #1 on May
8 11, 2012. That amendment extended the beginning construction date to June 18, 2014 and the
9 construction completion date to June 18, 2016.

10
11 On June 13, 2014 the department received the Request for Amendment #2 to the Site
12 Certificate for the Golden Hills Wind Project, jointly submitted by Golden Hills, BP and Orion. On
13 June 27, 2014 the department sent notice of the amendment request to all persons on the
14 Council’s mailing list, to the special list established for the facility and to an updated list of
15 property owners supplied by the certificate holder.⁴ On June 27, 2014 the department sent the
16 certificate holder instructions to send an attached memorandum to a department-provided list
17 of reviewing agencies by July 2, 2014. The memorandum requested comments from reviewing
18 agencies by July 30, 2014.

19
20 On June 27, 2014, the department notified the certificate holder and transferee that the
21 proposed order would be issued no later than December 11, 2014.⁵ After the certificate holder
22 requested additional time to respond to the department’s request for additional information,
23 the department extended the deadline to issue the proposed order to December 18, 2014.⁶
24 The department issued the proposed order on December 18, 2014 recommending approval of
25 the amendment and transfer. On the same day, the department issued notice of the proposed
26 order in accordance with AOR 345-027-0070, specifying January 19, 2015 as the deadline for
27 public comments and requests for a contested case on the proposed order. The department
28 also posted notice on the agency website, along with the proposed order. The department
29 received one written comment within proposed order comment period from Tom Lowther on
30 behalf of EOM, Ltd. The department did not receive any requests for a contested case.

31 On January 26, 2014, the department sent each of the Council members a copy of the EOM
32 comment letter and a staff report that addressed the issues raised in the comment letter and
33 summarized relevant issues for consideration of the proposed order.
34

⁴ Several members of the public submitted a joint comment stating that the property owner list was incomplete and proper notification did not occur. The certificate holder initially submitted a property owner list that was incorrect but corrected the error before the notices were mailed. Since the originally-submitted, incorrect property owner list was mistakenly left online after the mistake was corrected, some members of the public believed that not all property owners had been notified.

⁵ Golden Hills (GH1) Receipt Letter for Request to Amend, June 26, 2014

⁶ GH1 Response to Golden Hills’ Request for RAI Extension, September 10, 2014

1 Council held an informational hearing on the transfer request at the January 30, 2015, public
2 meeting in the Dalles, Oregon. The Council considered the proposed order and the public
3 comment at the same public meeting following the informational hearing.
4

5 At the meeting on January 30, 2015, the Council voted to approve amendment request #2 to
6 extend the construction deadline and transfer the site certificate, subject to the revisions
7 identified herein.
8

9 **II.C. Reviewing Agency Comments on the Request for Amendment 2**

10 Oregon Department of Agriculture (ODA)

11 ODA commented that it reviewed the proposed amendment and had no substantive comment
12 on the request.⁷
13
14

15 Oregon Department of Aviation (Aviation)

16 Aviation commented to ensure that condition IV.I.7 remains in effect.⁸
17

18 Oregon Department of Geology and Mineral Industries (DOGAMI)

19 DOGAMI commented to ensure that extending the construction deadlines and transferring
20 facility ownership were the only changes being proposed.⁹
21

22 Department of State Lands (DSL)

23 DSL commented that it reviewed the proposed amendment and had no substantive comment
24 on the request.¹⁰
25

26 Oregon Office of the Northwest Power and Conservation Council (NWPCC)

27 NWPCC commented that it reviewed the proposed amendment and had no substantive
28 comment on the request.¹¹
29

30 Oregon Department of Fish and Wildlife (ODFW)

31 ODFW had several comments. First, ODFW commented that the raptor nest surveys were
32 outdated and recommended that those surveys be updated using current raptor survey
33 protocols. Second, ODFW recommended the use of pre-emergent herbicide to target annual
34 grasses within areas disturbed by construction. Finally, ODFW recommended that the

⁷ GH1 Amendment #2 (AMD 2) Agency Comment ODA, July 30, 2014

⁸ GH1 AMD 2 Agency Comment Aviation, July 11, 2014. Condition IV.I.7 requires that before beginning construction, the certificate holder shall submit to the FAA and the Oregon Department of Aviation a Notice of Proposed Construction or Alteration identifying the proposed final locations of the turbines and related or supporting facilities and shall provide a copy of this notice to the department. The certificate holder must also notify the department of the FAA's and Aviation's responses as soon as they are received.

⁹ GH1 AMD 2 Agency Comment DOGAMI, July 11, 2014

¹⁰ GH1 AMD 2 Agency Comment DSL, July 11, 2014

¹¹ GH1 AMD 2 Agency Comment NWPCC, July 21, 2014

1 certificate holder coordinate with adjacent operational wind facilities to conduct fatality
2 monitoring in the same years to create a better data set.¹²

3
4 Oregon Public Utility Commission (OPUC)

5 OPUC commented to ensure that the facility would comply with all applicable OPUC safety rules
6 contained in OAR Chapter 860.¹³

7
8 Sherman County Planning Department

9 The Sherman County Planning Department commented with a request for clarification
10 regarding the applicability of the Sherman County Setback ordinance #39-2007.¹⁴

11
12 Wasco County Planning Department

13 The Wasco County Planning Department commented that it reviewed the proposed
14 amendment and had no substantive comment on the request.¹⁵

15
16 Oregon Water Resources Department (OWRD)

17 OWRD had no new comments but reiterated that any water use will require short term
18 authorization under a limited license unless the water is provided by a municipality.¹⁶

19 **II.D. Public Comments on the Request for Amendment 2**

20
21 McArthur, Macnab, Lohrey, and Van Gilder

22 Mike and Jeanney McArthur, Jim and Doreen Macnab, Brad and Donna Lohrey and Gary Van
23 Gilder, submitted a joint comment that identified six issues: (1) the request for amendment was
24 not submitted six months in advance of the deadline to begin construction; (2) the transfer
25 request did not meet the notice requirements of OAR 345-027-0100; (3) the list of property
26 owners within 500 feet of the project was not current or complete; (4) the cumulative impacts
27 of wind development in Sherman County has not been considered; (5) the approved noise
28 modeling indicated that the allowable noise level would be exceeded at certain properties; and
29 (6) the current site plan violates Sherman County's setback ordinance.¹⁷

30
31 Mike McArthur

32 Mr. McArthur reiterated the concern that the modeling for noise impacts in the original
33 application indicated that the allowed decibel levels would be exceeded at some properties at
34 certain wind speeds; and that the original and amended site certificates should not have been
35 approved. Additionally, Mr. McArthur also reiterated concern that Golden Hills had not made a
36 sufficient case for missing the six-month extension time frame.¹⁸

¹² GH1 AMD 2 Agency Comment ODFW, July 21, 2014

¹³ GH1 AMD 2 Agency Comment PUC, July 29, 2014

¹⁴ GH1 AMD 2 Agency Comment Sherman County, July 30, 2014

¹⁵ GH1 AMD 2 Agency Comment Wasco County, July 21, 2013

¹⁶ GH1 AMD 2 Agency Comment Water Resources Dept., July 21, 2014

¹⁷ GH1 AMD 2 Public Comment McArthur et al, July 29, 2014

¹⁸ GH1 AMD 2 Public Comment McArthur, July 30, 2014

1
2 **II.E. Comments on the Proposed Order**
3

4 The department received one comment on the proposed order within the comment period.
5 The comment was submitted by Tom Lowther, the General Partner of EOM Ltd. on behalf of
6 EOM Ltd. on January 19, 2014. The comment letter explained that EOM owns subsurface
7 mineral rights in seven different counties in Oregon, and states that EOM’s subsurface holdings
8 include approximately 2,600 acres of land within the Golden Hills site boundary. The comment
9 letter claimed that EOM did not receive proper notice of the proposed amendment, identifies
10 potential conflicts between surface uses and subsurface estate rights, and requested modified
11 or clarified condition language. The following provides the department’s analysis of each of the
12 issues and requests identified in the letter.
13

14 The comment letter first claimed that EOM did not receive proper notice of the proposed
15 project and that “failure to notify EOM as a property owner is a failure of due process.”
16 However, for the proposed amendment, the department complied with the site certificate
17 amendment request notice requirements of OAR 345-027-0070(1)(a) and the proposed order
18 notice requirements of OAR 345-027-0070(5). Consistent those rules, notice of the amendment
19 request and the notice of the proposed order were sent by mail or email to the property
20 owners shown on the most recent property tax assessment rolls.¹⁹ As explained in the EOM
21 comment letter, the owners of mineral estates are not listed on the tax rolls. Therefore, the
22 Council rules do not require that the department provide notice to subsurface estate holders as
23 land owners. As a result, EOM cannot, and did not, claim that the department did not comply
24 with the codified notice requirements for an amendment request. Instead, the EOM comments
25 related to notice seemingly take issue with the notice requirements in the rules themselves.
26 This is not the appropriate forum for challenging or amending the Council’s notice rules or the
27 statutes upon which those rules are based.
28

29 Furthermore, the rules governing notice of the amendment request and the proposed order do
30 not limit notice to land owners on the tax rolls. Pursuant to OAR 345-027-0070(1)(b) and (5),
31 notice of the amendment request and the proposed order must also be provided to the
32 Council’s general mailing list and any special mailing list created for the proposed project, which
33 includes, but is not limited to landowners on the tax assessment roles. Therefore, EOM, or any
34 other subsurface estate owner, could sign up for the Council’s general mailing list and would
35 receive notice of all site certificate amendment requests.²⁰

¹⁹ As provided in OAR 345-027-0060(1)(g), the site certificate holder must provide a list of the owners of property located within or adjacent to the site facility, as described in OAR 345-021-0010(1)(f). OAR 345-021-0010(1)(f) requires “a list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary...” While not directly applicable to site certificate amendment requests, providing notice to property owners identified on the tax rolls is consistent with ORS 469.370(2)(a), which in turn references ORS 197.763(2).

²⁰ In fact, Mr. Lowther is currently on the Council’s general mailing list and was sent notice, via email, of the Golden Hills Wind Project request for Amendment #2 on June 27, 2014 and was sent notice, via email, of the proposed order on December 18, 2014.

1
2 The comment letter next explained why the project implementation would impede access to
3 and utilization of the mineral, and claims that Oregon law protects the right of the mineral
4 estate owner to use the surface estate to develop the subsurface minerals. The comment letter
5 cited several cases that describe general rules of common law. The energy facility siting
6 process, however, is a standards based process. The comment letter did not cite any council
7 standards, statewide planning goals, applicable substantive criteria from Sherman County's
8 land use code, or other applicable statutes or rules that would grant the Council the authority
9 to resolve a potential conflict between the wind facility development on the surface and
10 subsurface mineral access or extraction. Absent a relevant standard or other applicable law, the
11 Council does not have the jurisdiction to deny or condition the amended site certificate to avoid
12 the potential conflict that the comment letter identifies.

13
14 Finally, the comment letter identified the mandatory site certificate condition related to
15 construction rights at OAR 345-027-0020(5)²¹ and requested that the Council modify the
16 condition or clarify terms in the condition. The cited condition is a mandatory condition for all
17 site certificates, and the wording cannot be modified for any specific site certificate. More
18 importantly, the Council does not have the obligation or authority clarify the condition or add a
19 new condition to resolve a potential property rights conflict between surface uses and
20 subsurface mineral rights. In other words, and as described in greater detail above, the
21 requested condition or clarification is not required for compliance with a Council standard or
22 other applicable statute or administrative rule.

23
24 For the foregoing reasons, the department did not recommend any modifications to the
25 proposed order in response to the comment letter submitted on behalf of EOM. The Council
26 adopts the department's analysis through this final order and finds that no additional
27 modifications to the proposed order are warranted in response to the EOM comment letter.

28 29 **II.F. Applicable Standards**

30
31 Under ORS 469.405, "a site certificate may be amended with the approval of the Energy Facility
32 Siting Council." The Council has adopted rules for determining when a site certificate
33 amendment is necessary (OAR 345-027-0030 and -0050) and rules setting out the procedure for
34 amending or transferring a site certificate (OAR 345-027-0060, -0070, and -0100). Consistent
35 with OAR 345-027-0100(12), the Council may act concurrently on a request to transfer a site
36 certificate and any other amendment request. However, the Council must follow the
37 procedures described in OAR 345-027-0100 for the transfer request and the procedures

²¹ OAR 345-027-0020(5) requires the Council to include the following condition in all site certificates, "[e]xcept as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission liens or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site." The condition further explains that "[f]or the purpose of this rule, 'construction rights' means the legal right to engage in construction activities."

1 described in OAR 345-027-0030 and 345-027-0070 for the extension of the construction
2 deadline.

3
4 III.F.1. Amendment to Extend Construction Deadline

5
6 OAR 345-027-0030 addresses “Amendments to Extend Construction Beginning and Completion
7 Deadlines.” Under OAR 345-027-0030, a site certificate holder may request an amendment to
8 extend the deadlines for beginning or completing the construction of a facility. The certificate
9 holder must submit the request “no later than six months before the date of the applicable
10 deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the
11 request, no later than the applicable deadline.” If the Council grants such a request, the Council
12 must specify a new deadline for beginning or completing construction that are not more than
13 two years from the current deadlines.

14
15 In this instance, the certificate holder did not submit the request to extend the construction
16 deadline six months before the June 18, 2014 deadline for starting construction. Therefore,
17 under OAR 345-027-0030, Golden Hills is required to demonstrate good cause for the delay in
18 submitting the request.

19
20 Compliance with the applicable Council standards is discussed in section III below.

21
22 II.F.2. Transfer of a Site Certificate

23
24 OAR 345-027-0100 describes the procedures and process for transferring a site certificate.
25 Under OAR 345-027-0100(1)(a) a transfer of ownership requires a transfer of the site certificate
26 when the person who will have the legal right to possession and control of the site or the
27 facility does not have authority under the site certificate to construct, operate or retire the
28 facility. On May 22, 2014 BP and Orion entered into a purchase and sale agreement for Orion to
29 purchase Golden Hills from BP, including all of the membership interests.²² Golden Hills will
30 remain the certificate holder but Orion, as the new parent company of Golden Hills, has the
31 legal right to possess and control the facility. Therefore, pursuant to OAR 345-027-0100(1)(a), a
32 transfer of the site certificate is required.

33
34 To request a transfer, a transferee must submit a written request to the department that
35 includes the information described in OAR 345-021-0010(1)(a), (d), (f) and (m), a certification
36 that the transferee agrees to abide by all terms and conditions of the site certificate currently in
37 effect and, if known, the date of the transfer of ownership. Additionally, the Council must hold
38 a public informational hearing during a Council meeting before acting on the transfer request.
39 To approve the transfer, the Council must find that the transferee complies with the standards
40 described in OAR 345-022-0010 (Organizational Expertise), OAR 345-022-0050 (Retirement and
41 Financial Assurance Standard) and, if applicable, OAR 345-024-0710(1) (Monetary Path

²² *Request for Amendment #2* (June 13, 2014) at 1-1

1 Payment Requirement for facilities subject to an applicable carbon dioxide emissions standard);
2 and that the transferee is or will be lawfully entitled to possession or control of the site or the
3 facility described in the site certificate (OAR 345-027-0100(8)).
4

5 **III. REVIEW OF THE PROPOSED AMENDMENT AND TRANSFER**

6 **III.A. Transfer Request**

7
8
9 As required under OAR 345-027-0100, the transfer request was jointly submitted by Golden
10 Hills and Orion, and included the documents required pursuant to OAR 345-021-
11 0010(1)(a),(d),(f) and (m).²³ In addition, Orion certified that it agrees to abide by all the terms
12 and conditions of the Site Certificate currently in effect and terms and conditions that will result
13 from this requested amendment.²⁴
14

15 As discussed above, under OAR 345-027-0100(8) the Council may approve the transfer request
16 if the Council finds that the transferee complies with the Council’s Organizational Expertise
17 Standard, the Retirement and Financial Assurance Standard and, if applicable, the Monetary
18 Path Payment Requirement for facilities subject to the carbon dioxide emissions standards.
19 Because the facility is a wind facility, carbon dioxide standards and monetary path payment
20 requirements are not applicable to this transfer request. The transferee’s compliance with the
21 standards is discussed below.
22

23 **III.A.1. Organizational Expertise: OAR 345-022-0010**

24
25 *(1) To issue a site certificate, the Council must find that the applicant has the*
26 *organizational expertise to construct, operate and retire the proposed facility in*
27 *compliance with Council standards and conditions of the site certificate. To conclude that*
28 *the applicant has this expertise, the Council must find that the applicant has*
29 *demonstrated the ability to design, construct and operate the proposed facility in*
30 *compliance with site certificate conditions and in a manner that protects public health*
31 *and safety and has demonstrated the ability to restore the site to a useful, non-*
32 *hazardous condition. The Council may consider the applicant’s experience, the*
33 *applicant’s access to technical expertise and the applicant’s past performance in*
34 *constructing, operating and retiring other facilities, including, but not limited to, the*
35 *number and severity of regulatory citations issued to the applicant.*
36

37 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
38 *an applicant has organizational, managerial and technical expertise, if the applicant has*
39 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
40 *operate the facility according to that program.*

²³ Request for Amendment 2 at Attachment 2

²⁴ Request for Amendment 2 at 5-2

1
2 *(3) If the applicant does not itself obtain a state or local government permit or approval*
3 *for which the Council would ordinarily determine compliance but instead relies on a*
4 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
5 *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*
6 *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*
7 *into, a contractual or other arrangement with the third party for access to the resource*
8 *or service secured by that permit or approval.*
9

10 *(4) If the applicant relies on a permit or approval issued to a third party and the third*
11 *party does not have the necessary permit or approval at the time the Council issues the*
12 *site certificate, the Council may issue the site certificate subject to the condition that the*
13 *certificate holder shall not commence construction or operation as appropriate until the*
14 *third party has obtained the necessary permit or approval and the applicant has a*
15 *contract or other arrangement for access to the resource or service secured by that*
16 *permit or approval.*
17

18 **Findings of Fact**

19
20 As applicable to this transfer request, subsections (1) and (2) of the Council’s Organizational
21 Expertise Standard require that the transferee demonstrate the ability to design, construct, and
22 operate a facility in compliance with Council standards and all site certificate conditions, as well
23 as to restore the site to a useful, non-hazardous condition. The Council may consider the
24 transferee’s experience and past performance in constructing, operating and retiring other
25 facilities. Subsections (3) and (4) address third party permits.
26

27 As the request explains, Golden Hills and Orion are both project-specific LLCs, and therefore the
28 organizational experience rests with the parent company, Orion Renewable. As the transferee
29 explains, Orion Renewables has considerable experience developing renewable energy projects,
30 with nearly 3,000 MW of in operation in the United States,²⁵ including EFSC-issued site
31 certificates in Sherman County, Oregon for Biglow Canyon Wind Farm Phase I and II. The
32 request further explains that Orion Renewable has not received any regulatory citations in
33 constructing or operating a facility similar to Golden Hills.²⁶ This history supports the
34 transferee’s assertion that Orion has the requisite engineering and project management
35 experience associated with generation projects to satisfy the Council’s Organizational Expertise
36 standard. Additionally, Condition IV.B.2 of the first amended Site Certificate requires that the
37 prior to construction, the certificate holder must identify all construction contractors and
38 requires them to have demonstrated experience in the design, engineering and construction of
39 similar facilities.
40

²⁵ *Request for Amendment #2 Attachment D*

²⁶ *Id.*

1 With regard to third party permits, in the *Final Order on the Application* for the original Golden
2 Hills site certificate, the Council determined that a single third party permit was required and
3 has been acquired.²⁷ As explained in that Order, the certificate holder has entered into an
4 agreement under which the facility would transmit power to the Klondike-Schoolhouse
5 Substation by means of an existing third party transmission line serving the Hay Canyon Wind
6 Farm, which is owned by Iberdrola Renewables. The certificate holder has previously provided
7 the Conditional Use Permit for the Hay Canyon Wind Farm as evidence that the third party
8 permit has been issued and a copy of the Memorandum of Shared Use Agreement as evidence
9 that it has entered into an agreement with Iberdrola for the use of the transmission line.

10
11 Additionally, Condition IV.B.1 of the Site Certificate requires that the certificate holder notify
12 the department of any changes in its corporate relationship with BP. The requested transfer
13 complies with that condition requirement. Further, because the transfer proposes to change
14 the parent company from BP to Orion Renewables, the Council adopts the following changes to
15 Condition IV.B.1

16
17 **(IV.B.1) The certificate holder shall report promptly to the Department any change in its**
18 **corporate relationship with Orion Renewable Energy Group LLC. ~~BP Alternative~~**
19 **~~Energy North America Inc. (“BPAE”).~~ The certificate holder shall report promptly to**
20 **the Department any change in its access to the resources, expertise and personnel**
21 **of Orion Renewable Energy Group LLC ~~BPAE~~.**

22
23 Based on the evidence presented in the transfer request, and the evidence in the record
24 regarding the existing third party permit, the Council finds that the transferee has the ability to
25 design, construct, and operate the proposed facility in compliance with all Council Standards, as
26 required by the Organizational Expertise standard.

27 Conclusion

28
29
30 For the reasons discussed above, and subject to compliance with the Site Certificate conditions,
31 the Council finds Orion, through Orion Renewable, satisfies the Organizational Expertise
32 standard.

33 III.A.2. Retirement and Financial Assurance: OAR 345-022-0050

34
35
36 *To issue a site certificate, the Council must find that:*

37
38 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*
39 *hazardous condition following permanent cessation of construction or operation of the*
40 *facility.*

41

²⁷ *Final Order on the Application* at 21

1 (2) *The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
2 *form and amount satisfactory to the Council to restore the site to a useful, non-*
3 *hazardous condition.*

4
5 **Findings of Fact**

6
7 To satisfy this standard, the Council must find that the site can be restored to a useful, non-
8 hazardous condition following permanent cessation, and that the transferee has a reasonable
9 likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an amount
10 adequate to restore the site.

11
12 In the *Final Order on the Application*, the Council found that the current certificate holder could
13 restore the site to a useful, non-hazardous condition.²⁸ To ensure the certificate holder met its
14 obligations, the Council adopted Conditions IV.C.1-10 in the Site Certificate.²⁹ As the transferee,
15 Orion has certified in the *Request for Amendment #2* that it agrees to abide by all the terms and
16 conditions of the *First Amended Site Certificate* currently in effect and all terms and conditions
17 that will result from this amendment request.³⁰ As a result, the certificate holder will be subject
18 to the same conditions that the Council used to ensure that the certificate holder could restore
19 the site to a useful, non-hazardous condition following permanent cessation of the facility's
20 operation.

21
22 OAR 345-022-0050(2) requires the Council to determine that the transferee has a reasonable
23 likelihood of obtaining a bond or letter of credit, in a form and amount satisfactory to the
24 Council, to restore the sites to a useful, non-hazardous condition. In the *Final Order on the*
25 *Application*, the Council determined that the value of the financial assurance bond or letter of
26 credit for restoring the site would not exceed \$16.491 million (2008 dollars).³¹ Orion Renewable
27 provided a letter from Wells Fargo dated June 12, 2014, in which Wells Fargo stated that
28 "Based upon current dollars on deposit at Wells Fargo Bank and subject to acceptable pricing,
29 terms and requisite approvals, Wells Fargo Bank would be willing to arrange a standby letter of
30 credit in an amount up to \$16.491 million in 2008 dollars for the purpose of ensuring that the
31 site of the Golden Hills Wind Project can be restored to a useful non-hazardous condition."³²

²⁸ *Final Order on the Application* at 219

²⁹ These conditions require the certificate holder to submit a final retirement plan that describes the activities necessary to restore the site a useful, non-hazardous condition for Council approval (Condition IV.C.2). Condition IV.C.1 requires that the certificate holder retire the facility according to the approved retirement plan. Condition IV.C.4 requires the certificate holder to maintain a bond or letter of credit that ensures funds are available to the Council to restore the site if the certificate holder does not retire the facility as required by IV.C.10. Condition IV.C.5 requires that if the certificate holder elects to use a bond to meet the requirements of condition IV.C.4, the certificate holder will ensure that the bond complies with all applicable rules and statutes. IV.C.6 and IV.C. 7 ensure that any release of toxic substances will be properly reported and mitigated for. Condition IV.C.9 requires that the certificate holder pay the actual costs of restoring the facility to a useful non-hazardous condition at the time of retirement notwithstanding the estimated amount required to restore the site.

³⁰ *Request for Amendment 2* at 5-2.

1 The letter does not constitute a firm commitment from Wells Fargo to issue the letter of credit,
2 but it is evidence that Orion Renewable could obtain the necessary letter of credit for the
3 facility.
4

5 Based on the transferee’s representations and the evidence in the record, the Council finds that
6 the transferee has the capacity to restore the facility site to a useful, non-hazardous condition
7 following permanent cessation of construction, and that the transferee has demonstrated a
8 reasonable likelihood of obtaining a bond or letter of credit, satisfactory to the Council, in
9 amounts adequate to restore the site to a useful, non-hazardous condition.

10
11 **Conclusion**

12
13 For the reasons discussed above, the Council finds that Orion Golden Hills satisfies the Council’s
14 Retirement and Financial Assurance standard.
15

16 **Department Recommendation Regarding the Transfer**

17
18 Based on the foregoing, the Council finds that the transfer request satisfies the requirements
19 under OAR 345-027-0100, including compliance with the standards described in OAR 345-022-
20 0010 and OAR 345-022-0050, and issue an amended site certificate that authorizes Golden Hills
21 to construct and operate the facility with Orion and Orion Renewables as its parent companies.
22

23 **III.B. Review of the Proposed Amendment**

24
25 **III.B.1 Demonstration of Good Cause**

26 As discussed above, Condition III.D.1 of the first amended site certificate requires the certificate
27 holder to begin construction by June 18, 2014; and Condition III.D.2 requires completion of the
28 construction by June 18, 2016. OAR 345-027-0030 allows for Council consideration of requests
29 for amendments to extend the construction beginning and completion dates. That provision
30 requires that the certificate holder submit the request, including an explanation of the need for
31 the extension, no later than six months before the date of the applicable deadline. If the
32 certificate holder does not submit its request to extend the construction deadlines at least six
33 months before the deadlines, the certificate holder must demonstrate good cause for the delay
34 in submitting the request.³³ The site certificate holder submitted its request for extension on
35 June 13, 2014. Accordingly, it must demonstrate good cause for the delay in submitting the
36 request.
37

³³ Two comments received from the public stated that the request for the extension of construction deadlines should be denied because the certificate holder did not submit a request for amendment at least six months before the applicable deadline. (Public Comment from McArthur, Macnab, Lohrey, and Van Gilder, July 29, 2014; public comment from McArthur, July 30, 2014.) Because the request was not submitted at least six months before the deadline to begin construction, the certificate holder must demonstrate good cause for the delay; however, provided good cause is shown, the delay itself does not establish a basis to deny the amendment request.

1 To demonstrate good cause for the delay in filing its amendment request, the certificate holder
2 provided a narrative timeline of the events leading up to the Request for Amendment. As
3 described in that narrative, in April 2013, BP was placed up for sale with all of its assets,
4 including all of its 16 operational wind farms located in the United States and other projects at
5 various points in development, including the facility. In August, 2013 BP announced it was
6 divesting of its development assets and immediately began marketing the facility.³⁴ As further
7 explained in the Amendment Request:

8
9 “The need for an extension to construction deadlines is driven by the sale of the Facility
10 from BP Wind to Orion. The parties did not sign a purchase and sale agreement until
11 March 31, 2014. In anticipation of the ownership transfer, BP Wind filed a notice of
12 intent to transfer on April 16, 2014 but the parties delayed filing this Transfer and
13 Amendment Request until there was certainty that the transaction would close, which
14 occurred on May 22, 2014. Upon closing, Orion promptly engaged legal counsel and
15 worked expeditiously to prepare this Transfer and Amendment Request. It would have
16 been impossible for the parties to file no later than six months prior to June 18, 2014, as
17 the transaction for the sale of the Facility simply had not materialized.”³⁵

18
19 The Council agrees that the certificate holder acted promptly following the Orion’s purchase of
20 the facility assets to file its request to extend the construction deadlines, and that the lack of a
21 purchaser for the facility until after the six-month deadline had passed constitutes good cause
22 for the delay in filing the construction extension request.

23
24 The Council finds that the certificate holder has demonstrated good cause for the delay in
25 submitting the amendment request and, as a result, that the request was timely submitted.

26 27 III.B.2 Review of Amendment Request

28
29 OAR 345-027-0070(10)(b) establishes the Council’s scope of review for amendment requests.
30 The Council must consider (1) whether the Council has previously granted an extension of the
31 deadline; (2) whether there has been any change of circumstances that affects a previous
32 Council finding that was required for issuance of a site certificate or amended site certificate;
33 (3) whether the facility complies with all Council standards; and (4) whether the amount of the
34 bond or letter of credit required under OAR 345-022-0050 is adequate.

35 36 III.B.2.a. OAR 345-027-0070(10)(b)(A)

37
38 OAR 345-027-0070(10)(b)(A) requires the Council to consider whether the Council has
39 previously granted an extension of the deadline.

40

³⁴ GH1 AMD2 RAI Response, September 12, 2014

³⁵ *Request for Amendment #2*, at 3-1, June 13, 2014

1 As discussed above, the Council has previously approved one extension of construction
2 deadlines.³⁶ However, as the certificate holder explained in its request, the sale of Golden Hills
3 Wind Farm, LLC to Orion Golden Hills Wind Farm, LLC did not close until May 22, 2014, less than
4 one month before the deadline to begin construction that the Council previously approved.
5 Given the number of pre-construction conditions in the site certificate, Orion was not able to
6 meet the June 28, 2014 deadline. The requested extension is necessary to give Orion, as the
7 certificate holder's new parent company, time to prepare for construction. Accordingly, the
8 Council finds that the asset sale involving the facility justifies a second extension of the
9 construction deadlines.

10
11 III.B.2.b. OAR 345-027-0070(10)(b)(B)

12
13 OAR 345-027-0070(1)(b)(B) requires that the Council consider "whether there has been any
14 change of circumstances that affects a previous Council finding that was required for issuance
15 of a site certificate or amended site certificate."³⁷

16
17 As explained in the amendment request, and as addressed in the discussion of the Transfer
18 Request in section II.E.2, the proposed change to the site certificate involves only the
19 ownership of the certificate holder's parent company. The request does not seek to enlarge the
20 existing site boundary or change any physical components of the facility. There are no changes
21 to the previously approved maximum of 267 turbines or the maximum generating capacity of
22 400 MW. Nor are there any requested changes in turbine or blade tip height. Accordingly, the
23 Council finds, except as it relates to the transfer of ownership, that that the requested
24 amendment proposes no change of circumstances that affect previous Council findings.

25
26 III.B.3. Evaluation of Council Standards (OAR 345-027-0070(1)(b)(C))

27
28 OAR 345-027-0070(1)(b)(C) requires that the Council consider whether the facility, as amended,
29 complies with all Council standards.

30
31 III.B.3.a. General Standard of Review: OAR 345-022-0000

32
33 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*
34 *Council shall determine that the preponderance of evidence on the record supports the*
35 *following conclusions:*

36 *(a) The facility complies with the requirements of the Oregon Energy Facility*
37 *Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the*
38 *standards adopted by the Council pursuant to ORS 469.501 or the overall public*
39 *benefits of the facility outweigh the damage to the resources protected by the*
40 *standards the facility does not meet as described in section (2);*

³⁶ *Final Order on Amendment #1*

³⁷ OAR 345-027-0070(1)(b)(B)

1
2 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except*
3 *for those statutes and rules for which the decision on compliance has been*
4 *delegated by the federal government to a state agency other than the Council,*
5 *the facility complies with all other Oregon statutes and administrative rules*
6 *identified in the project order, as amended, as applicable to the issuance of a site*
7 *certificate for the proposed facility. If the Council finds that applicable Oregon*
8 *statutes and rules, other than those involving federally delegated programs,*
9 *would impose conflicting requirements, the Council shall resolve the conflict*
10 *consistent with the public interest. In resolving the conflict, the Council cannot*
11 *waive any applicable state statute.*

12 * * *

13 Based on the following analysis, the Council finds that the proposed amendment to extend the
14 construction deadlines satisfies the requirements of OAR 345-022-0000.

15
16 III.B.3.b. Organizational Expertise: OAR 345-022-0010

17
18 *(1) To issue a site certificate, the Council must find that the applicant has the*
19 *organizational expertise to construct, operate and retire the proposed facility in*
20 *compliance with Council standards and conditions of the site certificate. To conclude that*
21 *the applicant has this expertise, the Council must find that the applicant has*
22 *demonstrated the ability to design, construct and operate the proposed facility in*
23 *compliance with site certificate conditions and in a manner that protects public health*
24 *and safety and has demonstrated the ability to restore the site to a useful, non-*
25 *hazardous condition. The Council may consider the applicant's experience, the*
26 *applicant's access to technical expertise and the applicant's past performance in*
27 *constructing, operating and retiring other facilities, including, but not limited to, the*
28 *number and severity of regulatory citations issued to the applicant.*

29
30 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
31 *an applicant has organizational, managerial and technical expertise, if the applicant has*
32 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
33 *operate the facility according to that program.*

34
35 *(3) If the applicant does not itself obtain a state or local government permit or approval*
36 *for which the Council would ordinarily determine compliance but instead relies on a*
37 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
38 *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*
39 *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*
40 *into, a contractual or other arrangement with the third party for access to the resource*
41 *or service secured by that permit or approval.*

1 (4) If the applicant relies on a permit or approval issued to a third party and the third
2 party does not have the necessary permit or approval at the time the Council issues the
3 site certificate, the Council may issue the site certificate subject to the condition that the
4 certificate holder shall not commence construction or operation as appropriate until the
5 third party has obtained the necessary permit or approval and the applicant has a
6 contract or other arrangement for access to the resource or service secured by that
7 permit or approval.
8

9 **Findings of Fact**

10
11 As applicable to this amendment request, subsections (1) and (2) of the Council's
12 Organizational Expertise Standard require that the certificate holder demonstrate the ability to
13 design, construct, and operate a facility in compliance with Council standards and all site
14 certificate conditions, as well as to restore the site to a useful, non-hazardous condition. The
15 Council may consider Golden Hills' experience and past performance in constructing, operating
16 and retiring other facilities. Subsections (3) and (4) address third party permits.
17 The Council addressed the Organizational Expertise Standard in section IV.B of the *Final Order*
18 *on Application*.³⁸ As a project specific LLC, Golden Hills relied on the organizational expertise of
19 its parent company, BP. The Council concluded that, subject to conditions stated in the *Final*
20 *Order on Application*, the certificate holder had the organizational expertise to construct and
21 operate the facility and had obtained the necessary third party permits.³⁹ The first amendment
22 to the Site Certificate extended the construction deadlines and did not impact findings
23 regarding the Organizational Expertise Standard. As a result the *Final Order on Amendment #1*
24 referred to the analysis in the *Final Order on the Application*.⁴⁰
25

26 As discussed above, the current amendment request also includes a request to transfer the
27 ownership of the certificate holder's parent company from BP to Orion. The analysis of the
28 requested transfer in section III.A.1 of this final order includes a demonstration of Orion's
29 compliance with the Organizational Expertise Standard. Accordingly, the Council determines
30 that, through Orion Renewables, the certificate holder continues to have the ability to design,
31 construct, and operate a facility in compliance with Council standards and all site certificate
32 conditions, as well as to restore the site to a useful, non-hazardous condition; and that it has
33 secured the required third-party permit.
34

35 **Conclusion**

36
37 Based on the findings discussed above and in section III.A.1, the Council finds that Golden Hills
38 satisfies the Council's Organizational Expertise standard.
39

40 **III.B.3.c. Structural Standard: OAR 345-022-0020**

³⁸ *Final Order on Application* at 20

³⁹ *Id.*

⁴⁰ *Final Order on Amendment #1* at 12

1
2 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the
3 Council must find that:

4
5 (a) The applicant, through appropriate site-specific study, has adequately
6 characterized the site as to the Maximum Considered Earthquake Ground Motion as
7 shown for the site in the 2009 International Building Code and maximum probable
8 ground motion, taking into account ground failure and amplification for the site
9 specific soil profile under the maximum credible and maximum probable seismic
10 events; and

11
12 (b) The applicant can design, engineer, and construct the facility to avoid dangers to
13 human safety presented by seismic hazards affecting the site that are expected to
14 result from maximum probable ground motion events. As used in this rule “seismic
15 hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral
16 spreading, tsunami inundation, fault displacement, and subsidence;

17
18 (c) The applicant, through appropriate site-specific study, has adequately
19 characterized the potential geological and soils hazards of the site and its vicinity
20 that could, in the absence of a seismic event, adversely affect, or be aggravated by,
21 the construction and operation of the proposed facility; and

22
23 (d) The applicant can design, engineer and construct the facility to avoid dangers to
24 human safety presented by the hazards identified in subsection (c).

25
26 (2) The Council may issue a site certificate for a facility that would produce power from
27 wind, solar or geothermal energy without making the findings described in section (1).
28 However, the Council may apply the requirements of section (1) to impose conditions on
29 a site certificate issued for such a facility.

30
31 (3) The Council may issue a site certificate for a special criteria facility under OAR 345-
32 015-0310 without making findings described in section (1). However, the Council may
33 apply the requirements of section (1) to impose conditions on a site certificate issued for
34 such a facility.

35
36 **Findings of Fact**

37
38 Section (1) of the Structural Standard generally requires the Council to evaluate whether the
39 certificate holder has adequately characterized the potential seismic, geological and soil
40 hazards of the site, and can design, engineer and construct the facility to avoid dangers to

1 human safety from these hazards.⁴¹ Under Section (2), the Council may issue a site certificate
2 for a wind energy facility without making findings regarding the Structural Standard; however,
3 the Council may apply the requirements of the standard to impose site certificate conditions.⁴²
4

5 The Council addressed the Structural Standard in section V.A of the *Final Order on the*
6 *Application*. The Council imposed five conditions to the Site Certificate to address issues related
7 to the Structural Standard.
8

9 The first amendment to the Site Certificate extended the construction deadlines and did not
10 impact findings regarding the Structural Standard. As a result the *Final Order on Amendment #1*
11 relied on the analysis in the *Final Order on the Application*.⁴³
12

13 The present request to extend construction deadlines would not result in the placement of
14 facility components within geologic areas that have not been addressed by the Council in the
15 approval of site certificate application and, therefore will not require any change or addition to
16 the conditions imposed in the original site certificate.
17

18 **Conclusion**

19

20 The Council finds that the conditions currently imposed in the Site Certificate to address the
21 Structural Standard ensure issues related to that standard are fully addressed.
22

23 **III.B.3.d. Soil Protection: OAR 345-022-0022**

24

25 *To issue a site certificate, the Council must find that the design, construction and operation of*
26 *the facility, taking into account mitigation, are not likely to result in a significant adverse impact*
27 *to soils including, but not limited to, erosion and chemical factors such as salt deposition from*
28 *cooling towers, land application of liquid effluent, and chemical spills.*
29

30 **Findings of Fact**

31

32 The Soil Protection Standard requires the Council to find that the design, construction and
33 operation of the facility are not likely to result in significant adverse impacts to soil.
34

35 The Council addressed the Soil Protection Standard in section IV.E of the *Final Order on the*
36 *Application*. The Council found that the design, construction, and operation of the facility, when
37 taking into account mitigation, would not result in a significant adverse impact to soils. The
38 original Site Certificate the Council adopted specific conditions to control and mitigate potential

⁴¹ The Council does not preempt the jurisdiction of any state or local government over matters related to building code compliance.

⁴²OAR 345-022-0020(3) does not apply to this proposed facility because the facility is a not a special criteria facility under OAR 345-015-0310.

⁴³ *Final Order Approving Amendment #1* at 24

1 adverse impact to soils and to mitigate the risk of soil contamination during construction and
2 operation.⁴⁴

3
4 The first amendment to the Site Certificate extended the construction deadlines and did not
5 impact the Soil Protection Standard. As a result the *Final Order on Amendment #1* relied on the
6 analysis in the *Final Order on the Application*.⁴⁵

7
8 The present construction deadline extension request would not result in any soil impacts that
9 have not been addressed by the Council or affect the facility's compliance with the Soil
10 Protection Standard. The certificate holder will remain subject to the conditions included in the
11 original Site Certificate.

12
13 **Conclusion**

14
15 Based on the reasoning discussed above, and subject to continued compliance with the
16 conditions in the original site certificate, the Council finds that the facility, as amended,
17 complies with the Council's Soil Protection Standard.

18
19 III.B.3.e. Land Use: OAR 345-022-0030
20

21 *(1) To issue a site certificate, the Council must find that the proposed facility complies*
22 *with the statewide planning goals adopted by the Land Conservation and Development*
23 *Commission.*

24
25 *(2) The Council shall find that a proposed facility complies with section (1) if:*

26
27 *(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a)*
28 *and the Council finds that the facility has received local land use approval under the*
29 *acknowledged comprehensive plan and land use regulations of the affected local*
30 *government; or*

31
32 *(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b)*
33 *and the Council determines that:*

34 *(A) The proposed facility complies with applicable substantive criteria as*
35 *described in section (3) and the facility complies with any Land Conservation and*
36 *Development Commission administrative rules and goals and any land use*
37 *statutes directly applicable to the facility under ORS 197.646(3);*

38
39 *(B) For a proposed facility that does not comply with one or more of the*
40 *applicable substantive criteria as described in section (3), the facility otherwise*

⁴⁴Golden Hills Wind Project Amended Site Certificate-Conditions IV.E.1-6

⁴⁵ *Id.* at 17

1 *complies with the statewide planning goals or an exception to any applicable*
2 *statewide planning goal is justified under section (4); or*

3
4 *(C) For a proposed facility that the Council decides, under sections (3) or (6), to*
5 *evaluate against the statewide planning goals, the proposed facility complies*
6 *with the applicable statewide planning goals or that an exception to any*
7 *applicable statewide planning goal is justified under section (4).*

8 *****.

9 **Findings of Fact**

10
11 The Land Use Standard requires the Council to find that a proposed facility complies with the
12 statewide planning goals adopted by the Land Conservation and Development Commission
13 (LCDC).⁴⁶ In considering this amendment request, OAR 345-027-0070(10) requires the Council
14 to apply the applicable substantive criteria in effect on the date the certificate holder submits a
15 request for amendment.

16
17 The applicable substantive criteria from the Sherman County Code have not changed since the
18 department received *Request for Amendment #1* on December 8, 2011.⁴⁷ As a result, the
19 applicable substantive criteria are:

20
21 **SCZO Article 3. Use Zones**

22 **SCZO Section 3.1 – Exclusive Farm Use Zone, F-1 Zone**

23
24 **SCZO Section 3.1(1).** General Purpose - To protect agricultural uses from encroachment by
25 other incompatible uses and to provide tax incentives to assure that a maximum amount of
26 agricultural land is retained in agricultural uses.

27
28 **SCZO Section 3.1(2).** Uses Permitted - In the F-1 Zone, the following uses and their accessory
29 uses are permitted:

⁴⁶The Council must apply the Land Use Standard in conformance with the requirements of ORS 469.504. In *Save Our Rural Oregon*, the Oregon Supreme Court has held “under ORS 469.504(1)(b) and (5), the Council may choose to determine compliance with statewide planning goals by evaluating a facility under paragraph (A) or (B) or (C), but...it may not combine elements or methods from more than one subparagraph, except to the extent that the chosen subparagraph itself permit.”

The Council may find compliance with statewide planning goals under ORS 469.504(1)(b)(A) if the Council finds that the proposed facility “complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted.” Under ORS 469.504(1)(b)(B) the Council must determine whether the proposed facility “otherwise [complies] with the applicable statewide planning goals.” In *Save Our Rural Oregon*, the Oregon Supreme Court held that “paragraph (B) necessarily requires an evaluation of the same applicable substantive criteria as paragraph (A) and, to the extent those criteria are not met, directs the council to consider statewide planning goals.” However, the Council may not evaluate a proposed facility under both subparagraph (A) and subparagraph (B).

⁴⁷ *Georgia Macnab e-mail dated July 14, 2014*

1 * * * * *

2 (g) Reconstruction or modification of public roads and highways, not including the
3 addition of travel lanes, where no removal or displacement of buildings will occur, or
4 new land parcels result.

5 * * * * *

6 (x) Transportation improvements.

7 1) Normal operation, maintenance, repair, and preservation activities of existing
8 transportation facilities

9 * * * * *

10
11 **SCZO Section 3.1(3).** Conditional Uses Permitted - In an F-I Zone, the following uses and
12 their accessory uses are permitted when authorized in accordance with the requirements of
13 Article 5 of this Ordinance and this Section:

14 * * * * *

15 (q) Commercial utility facilities.

16 * * * * *

17 (gg) Transportation Improvements. (Ord No. 22-05-2003)

18 * * * * *

19 **SCZO Section 3.1(4)(c)**—Dimensional Standards/Setback Requirements

20 (c) In an F-1 (EFU) Zone, the minimum setback requirements shall be as follows:

21 1) The front and rear setbacks from the property line shall be 30 feet, except that
22 the front yard setback from the right-of-way of an arterial or major collector or road
23 shall be 50 feet, unless approved otherwise by the Planning Commission.

24 2) Each side yard setback from a property line shall be a minimum of 25 feet, and
25 for parcels or lots involving a non-farm residential use with side yard(s) adjacent to
26 farm lands, said adjacent side yards shall be a minimum of 50 feet, unless approved
27 otherwise by the Planning Commission.

28
29
30 **SCZO Section 3.7 – Natural Hazards Combining Zone (NH)**

31 *In any zone that is combined with the (NH) Combining Zone, the requirements and standards*
32 *of this Section shall apply in addition to those set forth in the primary zone, provided that if a*
33 *conflict occurs, the more restrictive provisions shall govern.*

34
35 **SCZO Section 3.7(1). Purpose** - *The purpose of the (NH) Combining Zone is to promote and*
36 *protect the public health, safety and general welfare and to minimize potential losses by*
37 *providing guidelines for development in hazard areas. Development limitations are*
38 *applicable to developments in areas of surface water accumulations and high groundwater,*
39 *unstable or fragile soils, geological hazards, and steep slopes, generally those of 30 percent*
40 *or greater.*

41
42 **SCZO Section 3.7(3). Conditional Uses** - *In any Zone with which the (NH) Zone is combined,*
43 *all uses permitted by the primary Zone, except those set forth in Subsection (2) above, shall*
44 *be permitted only as Conditional Uses and subject to the provisions of this Zone and the*
45 *primary Zone. Said permits shall be processed in accordance with the provisions set forth for*
46 *a Conditional Use, or as set for by this Ordinance.*

1 **SCZO Section 3.7(4). Permit for Use or Development in a (NH) Zone** – *No person shall*
2 *construct, reconstruct, or install a use or development unless a permit therefore has been*
3 *received, except for those uses permitted as Outright by Subsection (2) of this Section.*
4 *Except for the improvement of an existing structure which is less than substantial as*
5 *determined by a Certified Building Official or the County upon appeal, no permit shall be*
6 *issued unless the use or development will be determined to be reasonably safe from the*
7 *applicable hazard, and otherwise in compliance with the provisions of this Section, the NH*
8 *Zone, this Ordinance, and other applicable regulations.*

9
10 **SCZO Section 3.7(5). Application Requirements for a Use in a (NH) Zone** – *An application*
11 *for a use or development in a Zone with which the (NH) Zone is combined shall be*
12 *accompanied by the following:*

13
14 *(a) Site Investigation Report: An application for a use or development in a (NH) Zone*
15 *requires a site investigation report for the subject-affected area. The site investigation*
16 *report shall provide information on the site of the proposed use or development and*
17 *surrounding and adjacent lands that are most likely to be affected thereby. Unless the*
18 *County determines that specific items are not required, the report shall include the*
19 *information described in this Subsection, together with appropriate identification of*
20 *information sources and the date of the information. The approved site investigation*
21 *report may be require to be reference in the deed and other documents of sale, and may*
22 *be required to be recorded with the deed of record.*

23
24 *(b) Background Data in Report. At a minimum, the Site Investigation Report shall contain*
25 *the following background information:*

- 26 1) *A general analysis of the affected site and general area's topography and*
27 *geology, including faults, folds, geologic and engineering geologic units, and any*
28 *soils, rock and structural details important to the engineering or geological*
29 *interpretations and the their relative activity.*
- 30 2) *Location and approximate depths of seasonal surface water accumulations and*
31 *groundwater tables, and location and direction of all watercourses, including*
32 *intermittent flows.*
- 33 3) *A history of soil and water related problems on the site and adjacent lands, which*
34 *may be derived from discussions with local residents and officials and the study*
35 *of old photographs, reports and newspaper files.*
- 36 4) *The extent of the surface soil formation and its relationship to the vegetation of*
37 *the site, the activity of the landform, and the locations on the site and*
38 *surrounding areas.*
- 39 5) *The following ground photographs of the site and surrounding areas with*
40 *information showing the scale and date of photographs and their relationship to*
41 *the topographic map and profiles:*
 - 42 A. *A view of the general area.*
 - 43 B. *The site of the proposed development.*
 - 44 C. *Any features which are important to the interpretation of the hazard*
45 *potential of the site, including all sites of erosion, surface or groundwater*
46 *accumulations, or accretion.*

- 1 (c) *Topography Map. A topography base map at a scale of not more than 1:100 with a*
2 *contour interval of 2 feet shall be prepared identifying the following features and*
3 *accompanied by references to the source(s) and date(s) of information used.*
4 1) *Position of lot lines.*
5 2) *Boundaries of the property.*
6 3) *Each geological feature classification type.*
7 4) *Areas of open ground and the boundaries and species identification of major plant*
8 *communities.*
9 5) *Any springs, streams, marshy areas, standing bodies of water, intermittent*
10 *waterways, drainage ways, and high groundwater areas with highest annual levels.*
11 6) *Cut terraces, erosion scarps, and areas exhibiting significant surface erosion due to*
12 *improper drainage and runoff concentration.*
13 7) *Geological information, including lithologic and structural details important to*
14 *engineering and geologic interpretations.*
15
16 (d) *Subsurface Analysis. If upon initial investigation it appears there are critical areas where*
17 *the establishment of geologic conditions at specific depths is required, a subsurface*
18 *analysis obtained by drilling holes, well logs, and other geophysical techniques shall be*
19 *conducted, or caused to be conducted by a qualified expert, by the person responsible for*
20 *the site, and investigation report to include the following data as appropriate.*
21 1) *The lithology and compaction of all subsurface horizons to bedrock.*
22 2) *The depth, width, slope and bearing of all horizons containing significant amounts of*
23 *silt and clay and any other subsurface layers which could reduce the infiltration of*
24 *surface waters.*
25
26 (e) *Development Proposal. The site investigation report shall include the following*
27 *information on the proposed development as applicable:*
28 1) *Plans and profiles showing the position and height of each structure, paved areas,*
29 *and areas where cut and fill is required for construction.*
30 2) *The percent and location of the surface of the site, which will be covered by*
31 *impermeable surfaces.*
32 3) *A stabilization program for the development describing:*
33 A. *How much of the site will be exposed during construction and what measures will*
34 *be taken to reduce erosion and soil movement during construction.*
35 B. *A revegetation plan designed to return open soil areas, both preexisting and*
36 *newly created, to a stable condition as soon as possible following construction*
37 *and the period of time during which revegetated areas will receive revegetation*
38 *maintenance.*
39 C. *Areas to be protected from vegetation loss or ground water pollution shall be*
40 *identified and means for protection described.*
41
42 (f) *Conclusions in the Site Investigation:*
43 1) *The site investigation report shall contain conclusions stating the following:*
44 A. *How the intended use of the land is compatible with the natural conditions; and*
45 B. *Any existing or potential hazards noted during the investigation.*
46 2) *Mitigating recommendations for specific areas of concern shall be included.*

1 3) *Conclusions shall be based on data included in the report, and the sources of*
2 *information and facts relied upon shall be specifically referenced.*

3
4 **SCZO Section 3.7(6). Standards for Building Construction in NH Zone**

5 (a) *Building construction shall only be approved under conditions that do not adversely*
6 *affect geological stability, surface or ground waters, or vegetation.*

7 (b) *The grading of land and the orientation and design of buildings shall avoid creating*
8 *conditions that will cause erosion or accretion of soil, or surface and ground water*
9 *contamination. Where there is some risk of these conditions occurring, a Qualified*
10 *Geological or Hydrological Expert, whichever is applicable, shall certify that the design*
11 *and control measures will comply with this standard.*

12 (c) *Construction work shall be scheduled and conducted to avoid erosion, and temporary*
13 *stabilization measures may be needed until permanent installations are accomplished.*

14
15 **SCZO Section 3.7(7). Standards for an Access Route in NH Zone – An access route within a**
16 **(NH) Zone shall comply with the following provisions:**

17 (a) *A road or street shall be stabilized by planking, gravel or pavement as deemed*
18 *necessary; and*

19 (b) *Roadways shall be built without installation of excessive fill, diversion of water, or*
20 *excessive cuts unless the site investigation determines that such conditions will not be*
21 *detrimental to the area or create unwarranted maintenance problems or additional*
22 *hazards.*

23
24 **SCZO Article 4. Supplementary Provisions**

25
26 **SCZO Section 4.9—Compliance with and Consideration of State and Federal Agency Rules**
27 **and Regulations**

28 *Approval of any use or development proposal pursuant to the provisions of this Ordinance*
29 *shall require compliance with and consideration of all applicable State and Federal agency*
30 *rules and regulations.*

31
32 **SCZO Section 4.13 Additional Conditions to Development Proposals**

33 *The County may require additional conditions for development proposals.*

34 1. *The proposed use shall not reduce the level of service (LOS) below a D rating for the*
35 *public transportation system. For developments that are likely to generate more than a*
36 *V/C ratio of 75 or greater, the applicant shall provide adequate information, such as a*
37 *traffic impact study or traffic counts, to demonstrate the level of impact to the*
38 *surrounding road system. The developer shall be required to mitigate impacts*
39 *attributable to the project.*

40 2. *The determination of the scope, area, and content of the traffic impact study shall be*
41 *coordinated with the provider of the affected transportation facility, i.e., city, county,*
42 *state.*

43 3. *Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or access ways*
44 *shall be required where necessary to mitigate the impacts to the existing transportation*
45 *system caused by the proposed use.*

46 4. *Construction of improvements such as paving, curbing, installation or contribution to*
47 *traffic signals, construction of sidewalks, bikeways, access ways, paths, or roads that*

1 serve the proposed use where necessary to mitigate the impacts to the existing
2 transportation system caused by the proposed use.

3
4 **SCZO Article 5. Conditional Uses**

5
6 **SCZO Section 5.2 General Criteria**

7 *In determining whether or not a Conditional Use proposal shall be approved or denied, it*
8 *shall be determined that the following criteria are either met or can be met through*
9 *compliance with specific conditions of approval.*

- 10 1. *The proposal is compatible with the applicable provisions of the County Comprehensive*
11 *Plan and applicable Policies.*
- 12 2. *The proposal is in compliance with the requirements set forth by the applicable primary*
13 *Zone, by any other applicable combining zone, and other provisions of this Ordinance*
14 *that are determined applicable to the subject use.*
- 15 3. *That, for a proposal requiring approval or permits from other local, state, and/or federal*
16 *agencies, evidence of such approval or permit compliance is established or can be*
17 *assured prior to final approval.*
- 18 4. *The proposal is in compliance with specific standards, conditions, and limitations set*
19 *forth for the subject use in this Article and other specific relative standards required by*
20 *this or other County Ordinance.*
- 21 5. *That no approval be granted for any use which is or is expected to be found to exceed*
22 *resource or public facility carrying capacities, or for any use which is found to not be in*
23 *compliance with air, water, land, and solid waste or noise pollution standards.*
- 24 6. *That no approval be granted for any use violation of this Ordinance.*
25 *SCZO Section 5.8 Standards Governing Specific Conditional Uses*

26
27 **SCZO Section 5.8 Standards Governing Specific Conditional Uses**

28 *A Conditional Use set forth by this Ordinance shall be subject to review by the Planning*
29 *Commission in accordance with the public hearing requirements set forth in this Ordinance.*

30
31 **SCZO Section 5.8 Standards Governing Specific Conditional Uses**

32 * * * * *

33 **(14) - Public Facilities and Services**

- 34 (a) *Public facilities including, but not limited to, utility substations, sewage treatment*
35 *plants, storm water and water lines, water storage tanks, radio and television*
36 *transmitters, electrical generation and transmission devices, fire stations and other*
37 *public facilities shall be located so as to best serve the County or area with a*
38 *minimum impact on neighborhoods, and with consideration for natural or aesthetic*
39 *values.*
- 40 (b) *Structures shall be designed to be as unobtrusive as possible. Wherever feasible, all*
41 *utility components shall be placed underground.*
- 42 (c) *Public facilities and services proposed within a wetland or riparian area shall provide*
43 *findings that: Such a location is required and a public need exists; and Dredge, fill*
44 *and adverse impacts are avoided or minimized.*

45
46 **SCZO Section 5.8 Standards Governing Specific Conditional Uses**

1 **20 - Non-farm Uses in an F-1 Zone** - Non-farm uses, excluding farm related, farm accessory
2 uses, or uses conducted in conjunction with a farm use as a secondary use thereof, may be
3 approved upon a finding that each such use:

- 4 1. Is compatible with farm uses described in ORS 215.203(2);
- 5 2. Does not interfere seriously with accepted farming practices on adjacent lands
6 devoted to farm use;
- 7 3. Does not materially alter the overall land use pattern of the area;
- 8 4. Is situated upon generally unsuitable land for the production of farm crops and
9 livestock, considering the terrain, adverse soil or land conditions, drainage and
10 flooding, vegetation, location and size of the tract, and the availability of necessary
11 support resources for agriculture;

12 **SCZO Article 11. Design & Improvement Standards & Requirements**

13
14 **SCZO Section 11.1 Compliance Required**

15 Any land division or development and the improvements required, whether by subdivision,
16 partitioning, creation of a street or other right of way, zoning approval, or other land
17 development requiring approval pursuant to the provisions of this Ordinance, shall be in
18 compliance with the design and improvement standards and requirements set forth in this
19 Article, in any other applicable provisions of this Ordinance, in any other provisions of any
20 other applicable County or affected City ordinance, and in any applicable provision of State
21 statutes or administrative rules.

22
23 **SCZO Section 11.2 Zoning or Other Land Development Permit or Approval**

24 Prior to the construction, alteration, reconstruction, expansion, or change of use of any
25 structure, lot, or parcel for which a permit or other land development approvals required by
26 this Ordinance, a permit or approval shall be obtained from the County or the designated
27 official.

28
29 **SCZO Section 11.8 Streets and Other Public Facilities**

- 30 1. It shall be the responsibility of the developer to construct all streets, curbs, sidewalks,
31 sanitary sewers, storm sewers, water mains, and electric and telephone lines, necessary
32 to serve the use or development in accordance with the specifications of the County
33 and/or the serving entity.
- 34 2. Electrical lines and telephone lines shall be encouraged to be underground. Other utility
35 lines shall be underground, unless otherwise approved by the County.
- 36 3. The location, width and grade of streets shall be considered in their relationship to
37 existing and planned streets, to topographical conditions, to public convenience and
38 safety, and to the proposed use or development to be reserved.
- 39 4. All streets, as far as is practicable, shall be in alignment with existing streets by
40 continuations of the centerlines. Necessary staggered street alignment resulting in "T"
41 intersections shall, wherever possible, leave a minimum distance of 200 feet between the
42 centerlines of streets of approximately the same direction, and in no case shall such
43 offset be less than 100 feet.
- 44 6. Streets shall be laid out to intersect at angles as near to right angles as practicable, and
45 in no case shall an acute angle be less than 80 degrees unless there is a special
46 intersection design approved by the County Roadmaster and the Superintendent of
47 Public Works and/or the City Engineer of an affected City.

7. *Whenever existing streets, adjacent to or within a tract, are of inadequate width and/or improvement standards additional right-of-way shall be provided and additional improvements may be required.*
9. *Except for the extension of existing streets, no street names shall be used which will duplicate or be confused with the name of an existing street in the County or within a City within a radius of 6 miles or within the boundaries of a special district such as school or fire.*
10. *Street grades shall not exceed 8 percent: on arterials, 10 percent on collectors, and 12 percent on all other streets including private driveways entering upon a public street or highway.*
11. *Centerline radii of curves shall not be less than 500 feet on arterials, 250 feet on collectors, or 100 feet on all others. Lesser or greater standards may be permitted or required by the County.*

SCZO Section 11.10 Completion or Assurance of Improvements

Prior to Final Plat approval for a subdivision, partitioning or [public utility district] PUD, or the final approval of a land use or development pursuant to applicable zoning provisions, the owner and/or developer shall either install required improvements and repair Existing streets and other public facilities damaged in the development of the property, or shall execute and file with the County an agreement between him or herself and the County specifying the period in which improvements and repairs shall be completed and providing that, if the work is not completed within the period specified, that the County may complete the work and recover the full costs together with court costs and attorney costs necessary to collect said amounts from the developer. The agreement shall also provide for payment to the County for the cost of inspection and other engineer and/or consultant services directly attributed to the project. The developer shall file with the agreement, to assure his full and faithful performance, one of the following, pursuant to approval and acceptance by the County Court:

1. *A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the District Attorney or County Legal Counsel.*
2. *A personal bond co-signed by at least one additional person together with evidence of financial responsibility and resources of those signing the bond sufficient to provide reasonable assurance of the ability to proceed in accordance with the agreement.*
3. *Cash deposit.*
4. *Such other security as may be deemed necessary by the County Court to adequately assure completion of the required improvements.*
5. *Amount of Security Required. Such assurance of full and faithful performance shall be for a sum approved by the County as sufficient to cover the cost of the improvements and repairs, including related engineering, inspection and other incidental expenses, plus an additional 1:5 percent for contingencies.*

SCZO Section 11.11 [Untitled]

Maintenance Surety Bond in an amount not less than 10 percent nor more than 25 percent of the value of all improvements to guarantee maintenance and performance for a period of not less than one year from the date of acceptance

Sherman County Comprehensive Plan

1
2 **SCCP Section VIII. Planning Process and Citizen Involvement**

3
4 **SCCP Section VIII, Goal I. To provide the opportunity for all citizens and effected agencies**
5 **to participate in the planning process.**

6 **Goal I, Policy I.**

7 *All land use planning public hearings, requiring public notice, shall be advertised in a*
8 *general circulation newspaper and be open to the public.*

9 **Goal I, Policy II.**

10 *All effected [sic] agencies and effected [sic] landowners shall be notified by written*
11 *notice of any proposed site-specific land use change.*

12
13 **SCCP Section XI. Physical Characteristics**

14
15 **SCCP Section XI, Goal I. Improve or maintain the existing quality of the physical**
16 **environment within the County.**

17 **Goal I, Policy I.**

18 *Erosion control provisions shall be incorporated into the subdivision requirements of*
19 *the Development Code. These shall require that the best practical methods be used*
20 *to control erosion from road and building construction sites as well as other changes*
21 *in land use, which may degrade the quality of the land, air and water.*

22
23 **SCCP Section XI, Goal II. To protect life and property from natural disasters and hazards.**

24
25 **SCCP Section XI, Goal III. Provide for the rational development and conservation of the**
26 **aggregate resources within the County.**

27
28 **SCCP Section XI, Goal IV. To provide a detailed investigation of the County's groundwater**
29 **resources.**

30
31 **SCCP Section XI, Goal V. To maintain the multiple use management concept on Bureau of**
32 **Land Management Lands within Sherman County.**

33
34 **SCCP Section XI, Goal VI. Encourage preservation of the rural nature [of] the Sherman**
35 **County landscape.**

36 **Goal VI, Policy VII.**

37 *Trees should be considered an important feature of the landscape and therefore the*
38 *County Court shall encourage the retention of this resource when practical*

39
40 **SCCP Section XI, Goal VII. Encourage preservation of fish and wildlife habitat in the**
41 **County.**

42
43 **SCCP Section XI, Goal VIII. Encourage the diversity of plant and animal species within the**
44 **County.**

45
46 **SCCP Section XII. Social Characteristics**
47

1 **SCCP Section XII, Goal I. To improve or maintain the current level of social services**
2 **available with the County and to assure the provision of public facilities consistent with**
3 **the intensity of land use.**

4 *Goal I, Policy I.*

5 *The County Court shall encourage the location of industries, businesses and*
6 *commercial services to diversify activities within the County consistent with the*
7 *desired population growth and other goals and policies.*

8
9 *Goal I, Policy IX.*

10 *The continuing loss of economic opportunities for residents of the County is of great*
11 *concern to the residents. The reduction of need for agricultural based jobs due to*
12 *improved farming technology and practices, the inability to keep families employed*
13 *or offer employment opportunities to attract new citizens or the children of existing*
14 *residents results in a stagnant or declining population. It is a matter of great urgency*
15 *that the Court gives increased consideration to land use applications, which will*
16 *increase economic diversity and employment opportunities. This increased*
17 *consideration shall not be made to the detriment of existing residential structures.*
18 *This consideration should focus on long-term job creation and should not be used as*
19 *a means to allow residential and commercial uses to locate outside urban growth*
20 *and rural service center (communities) boundaries.*

21
22 **Goal I, Policy X. Transportation Planning Policies**

23 *A. The Transportation System Plan and Land Use Review Policies*

24 *2. All development proposals, plan amendments, or zone changes shall conform*
25 *to the adopted Transportation System Plan.*

26 *3. Operation, maintenance, repair, and preservation of existing transportation*
27 *facilities shall be allowed without land use review, except where specifically*
28 *regulated.*

29 *B. Local-State Coordination Policies*

30 *2. The County shall provide notice to ODOT of land use applications and*
31 *development permits for properties that have direct frontage or direct access*
32 *onto a State highway. Information that should be conveyed to reviewers*
33 *includes project location, proposed land use action, and location of project*
34 *access points.*

35 *C. Protection of Transportation Facilities Policies*

36 *1. The County shall protect the function of existing and planned roadways as*
37 *identified in the Transportation System Plan.*

38 *2. The County shall include a consideration of a proposal's impact on existing or*
39 *planned transportation facilities in all land use decisions.*

40
41 **SCCP Section XII, Goal II. To protect historical, cultural and archeological resources from**
42 **encroachment by incompatible land uses and vandalism.**

43 **Goal II, Policy XI.**

44 *The following areas and structures shall be considered historically, archaeologically,*
45 *or culturally significant: all archeological sites; the Sherman County Courthouse;*
46 *portions of the Old Oregon Trail which are visible and pass over rangeland; and the*
47 *old Union Pacific Railroad bed through DeMoss Park.*

48 **Goal II, Policy XII.**

1 *The County Court shall encourage the preservation of these archaeologically or*
2 *culturally significant areas. Landowners will be encouraged to provide long-term*
3 *protection to these areas.*

4
5 **SCCP Section XIV. Economics**

6 **SCCP Section XIV, Goal I. Diversify the economic base of the County and maintain the**
7 **viability of the agricultural sector.**

8
9 **SCCP Section XV. Energy**

10 **SCCP Section XV, Goal I. Conserve energy resources.**

11 **Goal I, Policy I.**

12 *Cooperate with public agencies and private individuals in the use and development of*
13 *renewable resources.*

14 **SCCP Section XVI. Land Use**

15 **SCCP Section XVI, Goal I. To provide an orderly and efficient use of the lands within**
16 **Sherman County.**

17 **Goal I, Policy IV.**

18 *Commercial businesses, except those related to agricultural uses, should be located*
19 *within the incorporated cities or within areas served by the Biggs or Kent special*
20 *service districts.*

21
22 **Ordinance No. 39-2007 – Setback Ordinance for Wind Power Generation Siting**

23
24 **Findings of Fact**

25
26 In the *Final Order on the Application*, the Council addressed the applicable substantive criteria
27 submitted by the Sherman County governing body (the Special Advisory Group (SAG) appointed
28 pursuant to ORS 469.504(5)), and determined that the facility satisfied all applicable criteria,
29 except for the then-applicable setback provisions of SCZO 3.1.4 and the non-farm dwelling
30 provisions of 5.8.16(d). At the time of that application, SCZO 3.1.4 required a setback from the
31 property line of 50 feet for all project components. Golden Hills intends to locate aboveground
32 power collection lines, transmission lines and junction boxes within 50 feet of the property line.
33 With regard to SCZO 5.8.16(d), the Council found that the facility did not comply with the
34 requirement that the facility be located on land “generally unsuitable” for farm use.
35 Consequently, the Council directly applied Statewide Planning Goal 3, pursuant to ORS
36 469.504(1)(b)(B) and found that the proposed facility complied with that applicable Goal.

37
38 After the original site certificate was issued but before the first amendment, Sherman County
39 adopted Ordinance No. 39-2007, which established setback requirements for wind facilities.
40 During its review of the first request for a construction deadline extension, the Council
41 evaluated the facility under that Ordinance and determined that, with the addition of Condition
42 IV.D.22, the facility satisfied the County’s wind facility setback ordinance.⁴⁸

43

⁴⁸ *Final Order Approving Amendment #1* at 16. Condition IV.D.22 ensures that the final locations of the turbines within the micro-siting corridors comply with the requirements of the County’s ordinance.

1 The County’s applicable land use criteria have not changed since the Council approved the first
2 amended site certificate in 2012. Consequently, the present request to extend the construction
3 deadlines must be evaluated against the same criteria as in effect during the Council’s last
4 review of the facility, including Ordinance No. 39-2007.

5
6 Because the Council previously concluded that the facility complied with the Land Use
7 Standard, and the present request does not include changes to the existing site boundary or
8 any physical components of the facility, the Council relies on its previous findings to determine
9 that the facility, as amended, continues to comply with Sherman County’s applicable
10 substantive criteria and directly applicable state statutes and regulations.⁴⁹

11
12 One public comment expressed concern that the “current site plan violates Sherman County’s
13 setback ordinance.”⁵⁰ The comment does not include any explanation of how the facility is
14 alleged to violate the ordinance. As explained above, when the Council evaluated the facility
15 against the requirements of the setback ordinance in approving the 2012 amendment, the
16 Council determined that, subject to compliance with one additional condition, the facility
17 complies with the county’s setback ordinance. Because the current requested amendment does
18 not seek to change the physical layout of the facility, the Council finds no basis to change the
19 Council’s previous approval.

20
21 **Conclusion**

22
23 Based on reasons addressed above, and subject to compliance with the existing site certificate
24 conditions, the Council finds that the facility, as amended, satisfies the Council’s Land Use
25 Standard.

26
27 **III.B.3.f. Protected Areas: OAR 345-022-0040**

28
29 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate*
30 *for a proposed facility located in the areas listed below. To issue a site certificate for a*
31 *proposed facility located outside the areas listed below, the Council must find that,*
32 *taking into account mitigation, the design, construction and operation of the facility are*
33 *not likely to result in significant adverse impact to the areas listed below. References in*
34 *this rule to protected areas designated under federal or state statutes or regulations are*
35 *to the designations in effect as of May 11, 2007:*

36

⁴⁹ ODFW recommended in its comments that the certificate holder pursue the use of pre-emergent herbicide to target annual grasses within the areas disturbed during construction. Condition IV.D.16 requires that the site certificate holder work with the Sherman County Weed Control Manager regarding taking the appropriate measures to control noxious weeds. The Council encourages the certificate holder to consider ODFW’s recommendation in developing its plan to comply with Condition IV.D.16.

⁵⁰ GH1 AMD 2 Public Comment McArthur et al, July 29, 2014

1 (a) National parks, including but not limited to Crater Lake National Park and Fort
2 Clatsop National Memorial;

3
4 (b) National monuments, including but not limited to John Day Fossil Bed National
5 Monument, Newberry National Volcanic Monument and Oregon Caves National
6 Monument;

7
8 (c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et
9 seq. and areas recommended for designation as wilderness areas pursuant to 43
10 U.S.C. 1782;

11
12 (d) National and state wildlife refuges, including but not limited to Ankeny, Bandon
13 Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart
14 Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,
15 Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper
16 Klamath, and William L. Finley;

17
18 (e) National coordination areas, including but not limited to Government Island,
19 Ochoco and Summer Lake;

20
21 (f) National and state fish hatcheries, including but not limited to Eagle Creek and
22 Warm Springs;

23
24 (g) National recreation and scenic areas, including but not limited to Oregon Dunes
25 National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon
26 Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

27
28 (h) State parks and waysides as listed by the Oregon Department of Parks and
29 Recreation and the Willamette River Greenway;

30
31 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage
32 Areas pursuant to ORS 273.581;

33
34 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine
35 Sanctuary, OAR Chapter 142;

36
37 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
38 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed
39 as potentials for designation;

40
41 (l) Experimental areas established by the Rangeland Resources Program, College of
42 Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,
43 the Starkey site and the Union site;

1
2 (m) Agricultural experimental stations established by the College of Agriculture,
3 Oregon State University, including but not limited to: Coastal Oregon Marine
4 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
5 Center, Hood River Agriculture Research and Extension Center, Hermiston Columbia
6 Basin Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
7 Center, Moro North Willamette Research and Extension Center, Aurora East Oregon
8 Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern
9 Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research
10 Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon
11 Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond
12 Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport
13 Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath
14 Falls;

15
16 (n) Research forests established by the College of Forestry, Oregon State University,
17 including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett
18 Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the
19 Marchel Tract;

20
21 (o) Bureau of Land Management areas of critical environmental concern,
22 outstanding natural areas and research natural areas;

23
24 (p) State wildlife areas and management areas identified in OAR chapter 635,
25 Division 8.

26 ***

27
28 **Findings of Fact**

29
30 The Council addressed the Protected Area Standard in section IV.F of the *Final Order on the*
31 *Application* and found that the proposed facility complied with the Protected Area Standard,
32 without any required conditions. During its review of the first amendment to the Site Certificate
33 to extend the construction deadlines, the Council determined that the request did not impact
34 compliance with the Protected Area Standard and, therefore relied on the analysis in the *Final*
35 *Order on the Application*.

36
37 The current amendment request to extend the construction deadlines does not seek to enlarge
38 the existing site boundary or physical components of the facility. Nor does the amendment
39 request changes to the previously approved range of turbine types or sizes, maximum number
40 of turbines or maximum generation capacity. Therefore, the evidence indicates that the facility
41 would not result in any significant adverse impact to the protected areas protected by this
42 standard.

1 **Conclusion**

2
3 The Council finds that the facility, as amended, complies with the Protected Areas Standard.

4
5 **III.B.3.g. Retirement and Financial Assurance: OAR 345-022-0050**

6
7 *To issue a site certificate, the Council must find that:*

8
9 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*
10 *hazardous condition following permanent cessation of construction or operation of the*
11 *facility.*

12 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
13 *form and amount satisfactory to the Council to restore the site to a useful, non-*
14 *hazardous condition.*

15
16 **Findings of Fact**

17
18 The Retirement and Financial Assurance Standard is intended to protect the State of Oregon
19 and its citizens if the certificate holder fails to perform its obligation to restore the site in the
20 event the certificate holder ceases construction or operation of the facility.

21
22 The Council addressed the Retirement and Financial Assurance standard in section IV.C of the
23 *Final Order on Application*.⁵¹ The Council concluded that, subject to conditions stated in the
24 *Final Order on Application*, the certificate holder had the ability to adequately restore the site
25 to a useful, non-hazardous condition following permanent cessation of construction or
26 operation of the facility, and that the certificate holder had a reasonable likelihood of obtaining
27 a bond or letter of credit in a form and amount satisfactory to the Council.⁵² The first
28 amendment to the Site Certificate extended the construction deadlines and did not impact
29 findings regarding the Organizational Expertise Standard. As a result the *Final Order on*
30 *Amendment #1* referred to the analysis in the *Final Order on the Application*.⁵³

31
32 As discussed above, the current amendment request also includes a request to transfer the
33 ownership of the certificate holder’s parent company from BP to Orion. The analysis of the
34 requested transfer in section III.A.2 of this proposed order includes a demonstration of Orion’s
35 compliance with the Financial Assurances Standard. Accordingly, the Council determines that,
36 through Orion Renewables, the certificate holder continues to have the ability to adequately
37 restore the site to a useful, non-hazardous condition and continues to have a reasonable
38 likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the
39 Council. The Council further finds that the amount of the letter of credit, as discussed in section
40 III.A.2 of this order, is adequate for purposes of compliance with OAR 345-027-0010(d).

⁵¹ *Final Order on Application* at 22

⁵² *Id.* at 29

⁵³ *Final Order on Amendment #1* at 12

1
2 **Conclusion**

3
4 Based on the findings discussed above and in section III.A.2, the Council finds that Golden Hills
5 satisfies the Council’s Retirement and Financial Assurance standard.
6

7
8 **III.B.3.h. Fish and Wildlife Habitat: OAR 345-022-0060**

9
10 *To issue a site certificate, the Council must find that the design, construction and operation of*
11 *the facility, taking into account mitigation, are consistent with the fish and wildlife habitat*
12 *mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.*
13

14 **Findings of Fact**

15
16 The Fish and Wildlife Standard requires the Council to find that the design, construction, and
17 operation of the facility are consistent with fish and wildlife habitat mitigation goals as set forth
18 in OAR 635-415-0025.
19

20 The Council addressed the Fish and Wildlife Standard in section IV.M of the *Final Order on the*
21 *Application*. The Council made findings regarding the characteristics of the habitat types within
22 the site boundary and the State sensitive species observed within or near the lease boundaries
23 during avian point-counts and other wildlife surveys. Based on those findings, the Council found
24 that, subject to specified conditions, the design, construction and operation of the proposed
25 facility, taking mitigation into consideration, would be consistent with ODFW’s habitat
26 mitigation goals and standards.⁵⁴
27

28 The first amendment to the Site Certificate extended the construction deadlines and did not
29 impact compliance with the Fish and Wildlife Standard. As a result the *Final Order on*
30 *Amendment #1* relied on the analysis in the *Final Order on the Application*.⁵⁵
31

32 In its comments on the current request to extend the construction beginning and completion
33 deadlines, ODFW recommended that, because the raptor nest surveys are outdated, the site
34 certificate holder complete two years of raptor nest surveys prior to beginning of
35 construction.⁵⁶ ODFW subsequently agreed that two years of raptor nest surveys, with at least
36 one year completed prior to the beginning of construction, would provide assurance that

⁵⁴ *Final Order on the Application* at 128

⁵⁵ *Final Order Approving Amendment #1* at 23

⁵⁶ *GHI AMD 2 Reviewing Agency Comment ODFW*, July 25, 2014. In that comment, ODFW also initially recommended that Golden Hills coordinate with nearby adjacent operational wind facilities regarding fatality monitoring. The intent of this coordination would be to create a better set of data to better understand the impacts of wind facilities on wildlife in the Columbia Plateau Ecoregion. After further consideration, ODFW determined that more scientific and policy research was needed before recommending this change. (Email from Art Martin, October 22, 2014.)

1 habitat was properly categorized to account for active raptor nests. To address the
2 recommendation, the certificate holder produced a Raptor Nest Survey Protocol for the Golden
3 Hills Wind Project, which has been approved by ODFW. That Protocol is attached as Attachment
4 C.

5
6 To ensure continued compliance with the Fish and Wildlife Standard, the Council adopts the
7 following condition in the amended site certificate:

8
9 **(IV.M.11) The certificate holder shall conduct two (2) years of raptor nest surveys with at**
10 **least one (1) year of the surveys occurring prior to the beginning of**
11 **construction. The raptor nest surveys shall be conducted following the**
12 **instructions set forth in the Raptor Nest Survey Protocol for Golden Hills Wind**
13 **Project included as Attachment C to the Second Amended Site Certificate.**

14
15 Subject to this new condition, the Council finds that the design, construction, and operation of
16 the facility are consistent with fish and wildlife habitat mitigation goals as set forth in OAR 635-
17 415-0025.

18
19 **Conclusion**

20
21 For the reasons discussed above, and subject to the existing Site Certificate conditions and
22 Condition IV.M.11, the Council finds that the facility complies with the Council's Fish and
23 Wildlife Standard.

24
25 **III.B.3.i. Threatened and Endangered Species: OAR 345-022-0070**

26
27 *To issue a site certificate, the Council, after consultation with appropriate state agencies, must*
28 *find that:*

29
30 *(1) For plant species that the Oregon Department of Agriculture has listed as threatened*
31 *or endangered under ORS 564.105(2), the design, construction and operation of the*
32 *proposed facility, taking into account mitigation:*

33
34 *(a) Are consistent with the protection and conservation program, if any, that the*
35 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

36
37 *(b) If the Oregon Department of Agriculture has not adopted a protection and*
38 *conservation program, are not likely to cause a significant reduction in the likelihood*
39 *of survival or recovery of the species; and*

40
41 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
42 *threatened or endangered under ORS 496.172(2), the design, construction and operation*

1 of the proposed facility, taking into account mitigation, are not likely to cause a
2 significant reduction in the likelihood of survival or recovery of the species.
3

4 **Findings of Fact**

5
6 The Threatened and Endangered Species Standard requires the Council, in consultation with
7 appropriate state agencies, to find that the construction and operation of a facility is consistent
8 with applicable protection plans for threatened or endangered plant and animal species. The
9 Council must also determine that the facility's construction and operation are not likely to
10 cause a significant reduction in a species' survival or recovery.
11

12 The Council addressed the Threatened and Endangered Species Standard in section IV.L of the
13 Application for Site Certificate and determined that, subject to specified conditions, the
14 proposed facility complied with the Council's Threatened and Endangered Species Standard.⁵⁷
15 The first amendment to the Site Certificate to extend the construction deadlines and did not
16 impact compliance with the Threatened and Endangered Species Standard and consequently,
17 the Council relied on the analysis in the *Final Order on the Application* to conclude that the
18 facility continued to meet that standard.⁵⁸
19

20 For this second request to extend the construction start and completions deadlines, at the
21 department's request the certificate holder conducted an updated desktop survey of
22 threatened and endangered species in the area.⁵⁹ This study showed that there have been no
23 changes to the facility's compliance with the Threatened and Endangered Species standard; and
24 that, as a result of the downgrading of the status of Bald Eagles and Peregrine Falcons, the
25 impacts to threatened and endangered species are likely to be smaller than at the time the Site
26 Certificate was initially issued. However, because of the limitations of desktop surveys,
27 additional field surveys would be necessary to accurately determine whether the proposed
28 facility will have an impact on any threatened and endangered species in the survey area. To
29 ensure the facility's continued compliance with the Threatened and Endangered Species
30 Standard the Council adopts the following condition in the amended site certificate:
31

32 **(IV.L.3) Prior to the beginning of construction of the facility the certificate holder shall**
33 **perform new field surveys for threatened and endangered species following**
34 **the survey protocol set forth in the Application for Site Certificate. The**
35 **certificate holder shall report the results of the field surveys to the**
36 **Department, ODFW, and the Oregon Department of Agriculture. If the surveys**
37 **identify the presence of threatened or endangered species within the site**
38 **boundary, the certificate holder shall implement appropriate measures to**
39 **avoid a significant reduction in the likelihood of survival or recovery of the**

⁵⁷ *Final Order on the Application* at 112

⁵⁸ *Final Order Approving Amendment #1* at 23

⁵⁹ Response to RAI 1, July 12, 2014

1 species, as approved by the Department, ODFW, and the Oregon Department
2 of Agriculture.
3

4 Subject to this additional condition, the Council finds that the construction and operation of a
5 facility is consistent with applicable protection plans for threatened or endangered plant and
6 animal species; and that construction and operation are not likely to cause a significant
7 reduction in a species' survival or recovery.
8

9 **Conclusion**
10

11 For the reasons discussed above, and subject to the existing Site Certificate conditions and
12 Condition IV.L.3, the Council finds that the facility complies with the Council's Threatened and
13 Endangered Species Standard.
14

15 III.B.3.j. Scenic Resources: OAR 345-022-0080
16

17 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*
18 *find that the design, construction and operation of the facility, taking into account*
19 *mitigation, are not likely to result in significant adverse impact to scenic resources and*
20 *values identified as significant or important in local land use plans, tribal land*
21 *management plans and federal land management plans for any lands located within the*
22 *analysis area described in the project order.*
23

24 **Findings of Fact**
25

26 The Scenic Resources Standard requires the Council to find that the design, construction, and
27 operation of the facility are not likely to result in adverse impacts to scenic resources.
28

29 The Council addressed the Scenic Resource Standard in section IV.G of the *Final Order on the*
30 *Application*. The Council found that subject to specified conditions to ensure adequate
31 mitigation, the design, construction and operation of the facility, taking into account mitigation,
32 were not likely to result in significant adverse impacts to scenic resources and values identified
33 as significant or important in local land use plans, tribal land management plans and federal
34 land management plans for any lands located within the analysis area.⁶⁰
35

36 The first amendment to the Site Certificate to extend the construction deadlines did not impact
37 compliance with the Scenic Resource Standard. As a result the *Final Order on Amendment #1*
38 relied on the analysis and findings in the *Final Order on the Application* to conclude that the
39 facility continued to meet that standard.⁶¹
40

⁶⁰ *Final Order on Application* at 88

⁶¹ *Final Order Approving Amendment #1* at 19

1 The current request to extend the construction deadlines would not alter the visual impacts on
2 identified scenic resources or values or otherwise impact compliance with the Council’s Scenic
3 Resources standard. The Council finds that as amended, the design, construction, and operation
4 of the facility are not likely to result in adverse impacts to scenic resources.

5
6 **Conclusion**

7
8 For the reasons discussed above, and subject to compliance with the conditions in the Site
9 Certificate, the Council finds that the facility, as amended, complies with the Council’s Scenic
10 Resources standard.

11
12 III.B.3.k. Historic, Cultural and Archaeological Resources: OAR 345-022-0090

13
14 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
15 *Council must find that the construction and operation of the facility, taking into account*
16 *mitigation, are not likely to result in significant adverse impacts to:*

17
18 *(a) Historic, cultural or archaeological resources that have been listed on, or would*
19 *likely be listed on the National Register of Historic Places;*

20
21 *(b) For a facility on private land, archaeological objects, as defined in ORS*
22 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

23
24 *(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*

25
26 *(2) The Council may issue a site certificate for a facility that would produce power from*
27 *wind, solar or geothermal energy without making the findings described in section (1).*
28 *However, the Council may apply the requirements of section (1) to impose conditions on*
29 *a site certificate issued for such a facility.*

30 * * *

31
32 **Findings of Fact**

33
34 Section (1) of the Historic, Cultural and Archaeological Resources standard generally requires
35 the Council to find that the proposed facility is not likely to result in significant adverse impacts
36 to historic, cultural or archaeological resources. Under Section (2), the Council may issue a Site
37 Certificate for a wind power facility without making findings of compliance with this section.
38 However, the Council may impose Site Certificate conditions based on the requirements of this
39 standard.

40
41 The Council addressed the Historic, Cultural and Archaeological Standard in section V.B of the
42 *Final Order on the Application*. To ensure protection, the Council adopted Conditions V.B.1

1 through V.B.10 requiring mitigation measures.⁶² The first amendment to the Site Certificate to
2 extend the construction deadlines and did not impact the Historic, Cultural and Archaeological
3 Standard. As a result the *Final Order on Amendment #1* relied on the analysis in the *Final Order*
4 *on the Application*.⁶³

5
6 The current request to extend the construction deadlines would not change the facts on which
7 the Council relied in its previous findings regarding the Council's Historic, Cultural and
8 Archaeological Resources standard. The Council finds that the existing conditions ensure
9 adequate protection of historic, cultural and archeological resources.

10 11 **Conclusion**

12
13 The Council finds that the conditions currently imposed in the Site Certificate to address the
14 Historic, Cultural and Archaeological Resources Standard are adequate to ensure issues related
15 to that standard are fully addressed.

16 17 **III.B.3.I. Recreation: OAR 345-022-0100**

18
19 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*
20 *find that the design, construction and operation of a facility, taking into account*
21 *mitigation, are not likely to result in a significant adverse impact to important*
22 *recreational opportunities in the analysis area as described in the project order. The*
23 *Council shall consider the following factors in judging the importance of a recreational*
24 *opportunity:*

25
26 *(a) Any special designation or management of the location;*

27 *(b) The degree of demand;*

28 *(c) Outstanding or unusual qualities;*

29 *(d) Availability or rareness;*

30 *(e) Irreplaceability or irretrievability of the opportunity.*

31 32 **Findings of Fact**

33
34 The Recreation Standard requires the Council to find that the design, construction, and
35 operation of the facility are not likely to result in adverse impacts to important recreational
36 opportunities.

37
38 The Council addressed the Recreation Standard in section IV.H of the *Final Order on the*
39 *Application*. The Council found that the design, construction and operation of the facility were

⁶² *Final Order on Application* at 88

⁶³ *Final Order Approving Amendment #1* at 25

1 not likely to result in a significant adverse impact to any important recreational opportunities in
2 the analysis area.⁶⁴ The Council did not impose any conditions related to this standard.

3
4 The first amendment to the Site Certificate to extend the construction deadlines and did not
5 impact compliance with the Recreation Standard. As a result the *Final Order on Amendment #1*
6 relied on the analysis in the *Final Order on the Application* to determine that the facility
7 continued to comply with the Recreation Standard.⁶⁵

8
9 Since the *Final Order on Amendment #1*, a new state recreation area was opened within the
10 analysis area. However, Cottonwood Canyon State Park, which opened in September, 2013 and
11 is located 6.65 miles from the facility, is likely to be unaffected by the facility. The facility would
12 be inaudible in the park and would only be visible from isolated canyon rims.⁶⁶ Therefore, the
13 facility would not result in a significant adverse impact to Cottonwood Canyon State Park, or
14 any other important recreational opportunities.

15
16 **Conclusion**

17
18 For the reasons discussed above, the Council finds that the facility, as amended, complies with
19 the Council’s Recreation Standard.

20
21 **III.B.3.m. Public Services: OAR 345-022-0110**

22
23 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
24 *Council must find that the construction and operation of the facility, taking into account*
25 *mitigation, are not likely to result in significant adverse impact to the ability of public*
26 *and private providers within the analysis area described in the project order to provide:*
27 *sewers and sewage treatment, water, storm water drainage, solid waste management,*
28 *housing, traffic safety, police and fire protection, health care and schools.*

29
30 *(2) The Council may issue a site certificate for a facility that would produce power from*
31 *wind, solar or geothermal energy without making the findings described in section (1).*
32 *However, the Council may apply the requirements of section (1) to impose conditions on*
33 *a site certificate issued for such a facility.*

34 * * * * *

35
36 **Findings of Fact**

37
38 The Council’s Public Services standard requires the Council to evaluate a proposed facility’s
39 impacts on the ability of public and private service providers to supply sewer and sewage

⁶⁴ *Final Order on Application* at 94

⁶⁵ *Final Order Approving Amendment #1* at 20

⁶⁶ Golden Hills RAI Response 2014-09-12

1 treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police
2 and fire protection, health care, and schools.

3
4 Under OAR 345-022-0110(2), the Council may issue a site certificate for a facility that would
5 produce power from wind without making findings with respect to the Public Services Standard.
6 However, the Council may impose site certificate conditions based upon the requirements of
7 the standard.

8
9 The Council addressed the Public Services Standard in section V.C of the *Final Order on the*
10 *Application*, and imposed numerous conditions to address the requirements of this standard.⁶⁷
11 The first amendment to extend the construction deadlines and did not impact the Council’s
12 analysis or conditions regarding the Public Services Standard. As a result the *Final Order on*
13 *Amendment #1* relied on the analysis in the *Final Order on the Application* in evaluating this
14 standard.⁶⁸

15
16 The current request to extend the construction deadlines would not change the site boundary
17 or physical components of the facility. However, since the affected service providers’ ability to
18 provide their services could have changed, the certificate holder contacted each of the public
19 service providers listed in Exhibit U and received confirmation that their continuing level of
20 ability to provide the services listed. However, North Sherman County Rural Fire Protection
21 District, Moro Rural Fire Protection District and Sherman County Emergency Services expressed
22 renewed and continuing concern over the lack of volunteer fire fighters, especially during the
23 daytime hours, to accommodate the facility’s potential service needs. To address this concern
24 initially, Condition V.C.3 of the Site Certificate required the certificate holder to develop and
25 coordinate response protocols with the impacted fire districts. However, given the continuing
26 inadequacy of resources and present concerns expressed by the impacted service providers,
27 the Council revises V.C.3 as follows:

28
29 **(V.C.3) ~~During construction and operation of the facility, the certificate holder shall~~**
30 **~~develop and coordinate response protocols with the North Sherman Fire~~**
31 **~~Protection District, the Moro Rural Fire Protection District, and other wind energy~~**
32 **~~facility operators in the vicinity of Golden Hills.~~**
33 **Before beginning construction the certificate holder shall develop and implement**
34 **a fire safety and response plan for both construction and operation phases in**
35 **consultation with the Oregon State Fire Marshal, the Sherman County Emergency**
36 **Services, North Sherman Fire and Rescue, Moro Rural Fire Protection District and**
37 **other first-response agencies the facility will rely upon for fire protection services.**
38 **A copy of the plan must be provided to the Department at least 30 days before**
39 **beginning construction. The plan must be updated at least annually by the**
40 **agencies identified in (a) below and a copy provided to the agencies identified in**

⁶⁷ *Final Order on Application* at 94

⁶⁸ *Final Order Approving Amendment #1* at 26

- 1 (a), (b), and (c) and to the Department within 30 days of the update. The fire safety
2 and response plan shall address, at a minimum, the following:
- 3 a. Identification of agencies that participated in developing the plan;
 - 4 b. Identification of agencies that are designated as first response agencies or are
5 included in any mutual aid agreements with the facility;
 - 6 c. A list of any other mutual aid agreements or fire protection associations in the
7 vicinity of the facility;
 - 8 d. Complete contact information for each agency listed in (a), (b), and (c) above,
9 including at least two facility contacts available on a 24-hour basis;
 - 10 e. Communication protocols for both routine and emergency events and the
11 incident command system to be used in the event a fire response by multiple
12 agencies is needed at the facility;
 - 13 f. Access and fire response at the facility site during construction and operations.
14 Fire response plans during construction shall address regular and frequent
15 communication amongst the agencies regarding the number and location of
16 construction sites within the site boundary, access roads that are completed
17 and those still under construction, location of water receptacles, and a
18 temporary signage system until permanent addresses and signs are in place;
 - 19 g. The minimum designated time period of the fire season (i.e., May 1 through
20 October 15) and the criteria to modify the designated fire season to respond to
21 changing conditions;
 - 22 h. The number, size, and location of onsite water receptacles to be staged around
23 the facility site for firefighting purposes during the fire season; and
 - 24 i. Training needs (both for facility personnel and for first responders).
 - 25 j. Copies of mutual aid, fire protection association, or other agreements entered
26 into concerning fire protection at the facility site.

27
28 The Council adopts this revised condition in order to ensure adequate public services can be
29 provided to serve the proposed facility.

30 **Conclusion**

31
32
33 The Council finds subject to the revisions in Condition V.C.3, the conditions currently imposed
34 in the Site Certificate to address the Public Services Standard are adequate to ensure issues
35 related to that standard are fully addressed.

36 III.B.3.n. Waste Minimization: OAR 345-022-0120

37
38
39 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
40 *Council must find that, to the extent reasonably practicable:*

41
42 *(a) The applicant's solid waste and wastewater plans are likely to minimize*
43 *generation of solid waste and wastewater in the construction and operation of the*

1 facility, and when solid waste or wastewater is generated, to result in recycling and
2 reuse of such wastes;

3
4 (b) The applicant's plans to manage the accumulation, storage, disposal and
5 transportation of waste generated by the construction and operation of the facility
6 are likely to result in minimal adverse impact on surrounding and adjacent areas.
7

8 **Findings of Fact**

9
10 The Waste Minimization Standard requires the Council to find that the certificate holder will
11 minimize generation of solid waste and wastewater, and manage waste generated to result in
12 minimal adverse impacts on the surrounding and adjacent areas.
13

14 The Council addressed the Waste Minimization Standard in section V.D of the *Final Order on*
15 *the Application* and found that the facility, with conditions, complied with the Waste
16 Minimization standard.⁶⁹ The first amendment to the Site Certificate to extend the construction
17 deadlines did not impact compliance with the Waste Minimization Standard. As a result the
18 *Final Order on Amendment #1* relied on the analysis in the *Final Order on the Application*.⁷⁰
19

20 The current request to extend the construction deadlines would likewise not impact the
21 facility's ability to comply with the Waste Minimization Standard or otherwise impact the
22 Council's previous findings of compliance with this standard. Accordingly, the Council finds that
23 the certificate holder will minimize and manage solid waste and wastewater resulting in
24 minimal adverse impacts.
25

26 **Conclusion**

27
28 For the reasons discussed above, and subject to compliance with the conditions in the Site
29 Certificate, the Council finds that the facility, as amended, complies with the Council's Waste
30 Minimization Standard.
31

32 **III.B.3.o. Division 23 Standards**

33
34 The Division 23 standards apply only to "nongenerating facilities" as defined in ORS
35 469.503(2)(e)(K), except non-generating facilities that are related or supporting facilities. The
36 facility is not a nongenerating facility as defined in statute and therefore Division 23 is
37 inapplicable to the requested amendment.
38

39 **III.B.3.p. Division 24 Standards**

40

⁶⁹ *Final Order on Application* at 144

⁷⁰ *Final Order on Amendment #1* at 26

1 The Council's Division 24 standards include specific standards for siting facilities including wind,
2 underground gas storage reservoirs, transmission lines and facilities that emit carbon dioxide.

3
4 **Public Health and Safety Standards for Wind Energy Facilities: OAR 345-024-0010**

5 *To issue a site certificate for a proposed wind energy facility, the Council must find that the*
6 *applicant:*

7
8 *(1) Can design, construct and operate the facility to exclude members of the public from*
9 *close proximity to the turbine blades and electrical equipment.*

10
11 *(2) Can design, construct and operate the facility to preclude structural failure of the*
12 *tower or blades that could endanger the public safety and to have adequate safety*
13 *devices and testing procedures designed to warn of impending failure and to minimize*
14 *the consequences of such failure*

15
16 **Findings of Fact**

17
18 OAR 345-024-0010 requires the Council to consider specific public health and safety standards
19 related to wind energy facilities. In particular, the Council must evaluate the applicant's
20 proposed measures to exclude members of the public from close proximity to the turbine blades
21 and electrical equipment, and the applicant's ability to design, construct and operate the facility
22 to prevent structural failure of the tower or blades and to provide sufficient safety devices to
23 warn of failure.

24
25 The Council addressed the Public Health and Safety Standard for Wind Facilities in section IV.I
26 of the *Final Order on the Application* and found that the certificate holder could design,
27 construct and operate the facility to exclude members of the public from close proximity to the
28 turbine blades and electrical equipment.⁷¹ The Council further found that the certificate holder
29 could design, construct and operate the facility to preclude structural failure of the tower or
30 blades that could endanger public safety, and to have adequate safety devices and testing
31 procedures designed to warn of impending failure and to minimize the consequences of such
32 failure.⁷² Accordingly, the Council found that the facility, with conditions, complied with this
33 standard.⁷³ One of those conditions, Condition IV.I.7, required that before beginning
34 construction, the certificate holder shall submit to the FAA and the Oregon Department of
35 Aviation a Notice of Proposed Construction or Alteration identifying the proposed final
36 locations of the turbines and related or supporting facilities and shall provide a copy of this
37 notice to the department.

38
39 The first amendment to the Site Certificate extended the construction deadlines and did not
40 impact compliance with the Public Health and Safety for Wind Energy Facilities Standard. As a

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Final Order on Application* at 98

1 result the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*
2 *Application*.⁷⁴

3
4 The current request to extend the construction deadlines would likewise not have any impact
5 on compliance with the Public Health and Safety for Wind Facilities Standard. However, in its
6 comments on the request, the Department of Aviation specifically requested that no revisions
7 be made to Condition IV.I.7. The Council agrees and makes no changes to that condition.

8
9 **Conclusion**

10
11 Based on the reasoning above, and subject to compliance with the Site Certificate conditions,
12 the Council finds that the facility, as amended, continues to comply with the Council’s Public
13 Health and Safety Standards for Wind Energy Facilities.

14
15 **Siting Standards for Wind Energy Facilities: OAR 345-024-0015**

16
17 *To issue a site certificate for a proposed wind energy facility, the Council must find that the*
18 *applicant can design and construct the facility to reduce cumulative adverse environmental*
19 *effects in the vicinity by practicable measures including, but not limited to, the following:*

20
21 *(1) Using existing roads to provide access to the facility site, or if new roads are needed,*
22 *minimizing the amount of land used for new roads and locating them to reduce adverse*
23 *environmental impacts.*

24
25 *(2) Using underground transmission lines and combining transmission routes.*

26
27 *(3) Connecting the facility to existing substations, or if new substations are needed,*
28 *minimizing the number of new substations.*

29
30 *(4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife*
31 *in areas near turbines or electrical equipment.*

32
33 *(5) Designing the components of the facility to minimize adverse visual features.*

34
35 *(6) Using the minimum lighting necessary for safety and security purposes and using*
36 *techniques to prevent casting glare from the site, except as otherwise required by the*
37 *Federal Aviation Administration or the Oregon Department of Aviation*

38
39 **Findings of Fact**

40

⁷⁴ *Final Order Approving Amendment #1* at 21

1 The Wind Energy facility Cumulative Effects Standard requires the certificate holder to use
2 practicable measures in designing and constructing the facility to reduce the cumulative
3 adverse environmental effects in the vicinity. The standard does not require the Council to find
4 that the facility would have no cumulative environmental impacts; however, the Council must
5 find that the applicant is able to use “practicable measures” in the design and construction of
6 the facility to reduce the cumulative effects..
7

8 The Council addressed the Cumulative Effects Standard for Wind Facilities in section IV.J of the
9 *Final Order on the Application* and found that the proposed design and construction of the
10 facility would reduce visual impact, restrict public access and reduce cumulative adverse
11 environmental impacts in accordance with this standard.⁷⁵ Specifically, in approving the original
12 application, the Council considered and made findings regarding cumulative impacts of the
13 subject facility related to (1) roads; (2) transmission lines and substations; (3) wildlife
14 protection; (4) visual features; (5) lighting; and (6) cumulative impacts of wind projects in the
15 Columbia Basin on bird and bat populations. As approved, the certificate holder is required to
16 use existing county and farm roads and to construct the minimum length and width of the
17 private roads that will be used to access the turbines.⁷⁶ The transmission lines and the two
18 substations are required to take advantage of existing transmission lines where possible and
19 the power collection system is required to be installed underground.⁷⁷ The facility is required to
20 be designed to adhere to the 1996 Avian Powerline Interaction Committee’s suggested
21 practices for raptor protection on powerlines and to minimize disturbances to non-agricultural
22 habitats and provide mitigation according to ODFW’s habitat mitigation guidelines.⁷⁸ The wind
23 turbine towers must be coated with a neutral color matte finishes to blend in surrounding
24 landscape.⁷⁹ The turbines are required to have only the minimum lighting required by the FAA
25 and the substation and O&M facilities is required to have lighting that is shielded or directed
26 downward.⁸⁰ The Council considered the fatality rates for various avian species at nearby wind
27 facilities in the Columbia Plateau Ecoregion and data from scientific literature regarding avian
28 fatalities, and determined that the projected fatality rates were acceptable to the region’s avian
29 breeding populations.
30

31 The first amendment to the Site Certificate extended the construction deadlines and did not
32 impact compliance with the Cumulative Effects Standard for Wind Facilities. As a result the *Final*
33 *Order on Amendment #1* relied on the analysis in the *Final Order on the Application*.⁸¹
34

35 The requested amendment to extend the construction deadlines would not impact the
36 cumulative effects of the components authorized for construction within the previously

⁷⁵ *Id.*

⁷⁶ *Id.* at 98

⁷⁷ *Id.* at 99

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Final Order Approving Amendment #1* at 22

1 approved site boundary or otherwise change the facts upon which the Council relied in making
2 findings regarding the cumulative effects from this wind facility. However, the department
3 received two public comments that expressed concern that the cumulative impacts have not
4 been adequately considered. Specifically, the commenters assert that the cumulative impacts
5 of all the wind projects in Sherman County had not been adequately addressed, given the
6 current density of wind facilities in the county.⁸²

7
8 As recited above, the Cumulative Impacts for Wind Facilities requires the Council to consider
9 the environmental impacts of the subject facility, to ensure that it can be designed, constructed
10 and operated in a manner that reduces cumulative environmental impacts. It does not require
11 an evaluation of the density of wind facilities throughout the county.

12
13 The requested extension will not impact the certificate holder’s obligations and conditions
14 under the site certificate to comply with these design and operational features that will
15 mitigate and minimize cumulative environmental impacts.

16
17 **Conclusion**

18
19 The Council finds that, subject to the existing site certificate conditions, the facility, as
20 amended, complies with the Council’s siting Standards for Wind Energy Facilities.

21
22 **Siting Standards for Transmission Lines: OAR 345-0240-0090**

23
24 *To issue a site certificate for a facility that includes any transmission line under Council*
25 *jurisdiction, the Council must find that the applicant:*

26
27 *(1) Can design, construct and operate the proposed transmission line so that alternating*
28 *current electric fields do not exceed 9 kV per meter at one meter above the ground*
29 *surface in areas accessible to the public;*

30
31 *(2) Can design, construct and operate the proposed transmission line so that induced*
32 *currents resulting from the transmission line and related or supporting facilities will be*
33 *as low as reasonably achievable*

34
35 **Findings of Fact**

36
37 These standards address safety hazards associated with electric fields around transmission
38 lines. Section (1) of OAR 345-024-0090 sets a limit for electric fields from transmission lines of
39 not more than 9 kV per meter at one meter above the ground surface in areas that are
40 accessible to the public. Section (2) requires measures to reduce the risk of induced current.

⁸² Public Comment from McArthur, Macnab, Lohrey, and Van Gilder, July 29, 2014; public comment from McArthur, July 30, 2014

1
2 The Council addressed the Siting Standards for Transmission Lines in section IV.K of the *Final*
3 *Order on the Application*. In the *Final Order on the Application*, the Council found that the
4 certificate holder could construct and operate the proposed transmission lines so that
5 alternating current electric fields do not exceed 9 kV per meter at one meter above the ground
6 surface in areas accessible to the public.⁸³ The Council further found that the certificate holder
7 could design, construct and operate the proposed transmission lines so that induced currents
8 resulting from the transmission lines will be as low as reasonably achievable.⁸⁴ Therefore, the
9 Council concluded that the facility complied with the Siting Standards for Transmission Lines.⁸⁵

10
11 The first amendment to the Site Certificate to extend the construction deadlines did not impact
12 the safety hazards associated with electric fields around transmission lines. As a result the *Final*
13 *Order on Amendment #1* relied on the analysis in the *Final Order on the Application*.⁸⁶

14
15 This current request to extend the construction deadlines would not make any physical changes
16 to the approved transmission lines⁸⁷ and therefore would likewise not impact the facility's
17 ability to comply with the Siting Standards for Transmission Lines or otherwise impact the
18 Council's previous findings of compliance with this standard.

19 20 **Conclusion**

21
22 For the reasons discussed above, and subject to compliance with the conditions in the Site
23 Certificate, the Council finds that the facility, as amended, complies with the Council's Siting
24 Standards for Transmission Lines.

25 26 **III.B.4. Other Applicable Regulatory Requirements Under Council Jurisdiction**

27
28 Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-022-
29 0000), the Council must determine whether the proposed facility complies with "all other
30 Oregon statutes and administrative rules..., as applicable to the issuance of a site certificate for
31 the proposed facility." In evaluating this amendment, the Council must determine whether the
32 proposed amendment affects any finding made by the Council in earlier orders.⁸⁸ This section

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Final Order on Application* at 106

⁸⁶ *Final Order Approving Amendment #1* at 22

⁸⁷ In a comment on the amendment request, the Oregon Public Utility Commission (PUC) Safety and Reliability Section has requested that the Council ensure that certificate holders coordinate with PUC staff on the design and specifications of electrical transmission lines and natural gas pipelines. The PUC explained that others in the past have made inadvertent, but costly, mistakes in the design and specifications of power lines and pipelines that could have easily been corrected early if the developer had consulted with the PUC staff responsible for the safety codes and standards. Condition VI.A.4.2 requires that the certificate holder comply with all PUC rules, and coordinate the design of electric transmission lines with the PUC

⁸⁸ OAR 345-027-0070(10)(c)

1 addresses the applicable Oregon statutes and administrative rules that are not otherwise
2 addressed, including noise control regulations, regulations for removal or fill of material
3 affecting waters of the state, and regulations for appropriating ground water.

4
5 III.B.4.a. Noise Control Regulations: OAR 340-035-0035

6
7 *(1) Standards and Regulations:*

8 ***

9 *(b) New Noise Sources:*

10
11 *(A) New Sources Located on Previously Used Sites. No person owning or controlling a*
12 *new industrial or commercial noise source located on a previously used industrial or*
13 *commercial site shall cause or permit the operation of that noise source if the*
14 *statistical noise levels generated by that new source and measured at an appropriate*
15 *measurement point, specified in subsection (3)(b) of this rule, exceed the levels*
16 *specified in Table 8, except as otherwise provided in these rules. For noise levels*
17 *generated by a wind energy facility including wind turbines of any size and any*
18 *associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.*

19 *****

20
21 **Findings of Fact**

22
23 The noise control regulations in OAR 340-035-0035 apply to noise associated with operation of
24 the facility. The Council addressed the Noise Control Regulations in section VI.A.1 of the *Final*
25 *Order on the Application*. In the original application, to represent the range of turbines that
26 could be used at the proposed facility, the applicant provided total and octave band sound
27 power level data for the worst case (loudest) scenario. To ensure that the facility as-built would
28 comply with the noise regulations, the Council adopted four conditions that required the
29 certificate holder to provide information to the department about the turbines selected and the
30 final design layout before beginning construction. Condition VI.A.1.2 specifically requires that
31 the certificate holder submit a new noise analysis to the department prior to construction that
32 demonstrates that the facility will be in compliance with all relevant noise related
33 requirements. The Council found that the facility, with conditions, complied with the Noise
34 Control Regulations.⁸⁹

35
36 The first amendment to the Site Certificate to extend the construction deadlines did not impact
37 compliance with the Noise Control Regulations. As a result the *Final Order on Amendment #1*
38 relied on the analysis in the *Final Order on the Application*.⁹⁰

39
40 The requested extension to the construction deadlines does not propose any changes that
41 would impact the noise levels or otherwise impact the evaluation of compliance with the Noise

⁸⁹ *Final Order on Application* at 157

⁹⁰ *Final Order Approving Amendment #1* at 27

1 Standard. However, a public comment expressed concern that that the noise modeling
2 indicated that the allowable noise level would be exceeded at certain properties.⁹¹ However, as
3 discussed above and required under Condition VI.A.I.2, prior to construction, the certificate
4 holder must submit a new noise analysis to the department to demonstrate and confirm that
5 the facility will be in compliance with all relevant noise related requirements. Accordingly, the
6 Council finds that, as proposed, and subject to the existing site certificate conditions, will not
7 exceed the allowable noise levels under the Noise Control Regulations.

8
9 **Conclusion**

10
11 For the reasons discussed above, and subject to the existing site certificate conditions, the
12 Council finds that the facility, as amended, complies with the applicable noise control
13 regulations in OAR 340-035-0035.

14
15 **III.B.4.b. Removal-Fill**

16
17 The Oregon Removal-Fill Law (ORS 196.800 through .990) and DSL regulations (OAR 141-085-
18 0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of material
19 is removed, filled or altered within any “waters of the state” at the proposed site.⁹² The U.S.
20 Army Corps of Engineers administers Section 404 of the Clean Water Act, which regulates the
21 discharge of fill into waters of the United States, and determines whether a Nationwide or
22 Individual Section 404 fill permit is required.

23
24 **Findings of Fact**

25
26 The Council addressed the Removal Fill Law in section VI.A.2 of the *Final Order on the*
27 *Application*. The Council found that the facility would not require a Removal Fill Permit.⁹³ The
28 first amendment to the Site Certificate to extend the construction deadlines did not impact the
29 Removal Fill Law. As a result the *Final Order on Amendment #1* relied on the analysis in the
30 *Final Order on the Application*.⁹⁴

31
32 The requested construction extension likewise would not affect any areas that were not
33 previously addressed by the delineation report on the wetlands and waters within the analysis
34 area. Therefore, the Council finds that the removal fill laws are not impacted by the requested
35 amendment.

36
37 **Conclusion**

38

⁹¹ Public comment from McArthur, Macnab, Lohrey and Van Gilder July 29, 2014

⁹² OAR 141-085-0010(225) defines “Waters of this State.” The term includes wetlands and certain other water bodies

⁹³ *Final Order on Application* at 158

⁹⁴ *Final Order Approving Amendment #1* at 28

1 The Council finds that the proposed facility, as amended, will not Section 404 Removal Fill
2 Permit.

3
4 III.B.4.c. Water Rights
5

6 Under ORS Chapters 537 and 540 and OAR Chapter 690, OWRD administers water rights for
7 appropriation and use of the water resources of the state. Under OAR 345-022-0000(1), the
8 Council must determine whether the proposed facility would comply with these statutes and
9 administrative rules.

10
11 **Findings of Fact**
12

13 The Council addressed the Ground Water Act in section VI.A.3 of the *Final Order on the*
14 *Application*. The Council found that the facility would comply with the Ground Water Act of
15 1955 and the rules of the Water Resource Department.⁹⁵

16
17 The first amendment to the Site Certificate to extend the construction deadlines did not impact
18 compliance with the requirements of the Ground Water Act of 1955 and Water Resources
19 Department rules. As a result the *Final Order on Amendment #1* relied on the analysis in the
20 *Final Order on the Application*.⁹⁶

21
22 The requested extension of the construction deadlines would likewise not impact the facility's
23 water use or otherwise impact compliance with the Ground Water Act of 1955 or any Water
24 Resources Department rules.

25
26 **Conclusion**
27

28 For the reasons discussed above, the Council finds that the facility, as amended, complies with
29 the applicable water rights statutes and regulations.

30
31 **IV. GENERAL APPLICATION OF CONDITIONS**
32

33 The conditions referenced in this final order include conditions that are specifically required by
34 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific
35 Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345, Division 26
36 (Construction and Operation Rules for Facilities). The conditions referenced in this final order
37 include conditions based on representations in the request for amendment and the supporting
38 record. The Council deems these representations to be binding commitments made by the
39 certificate holder. This final order also includes conditions that the Council finds necessary to

⁹⁵ *Final Order on Application* at 158

⁹⁶ *Final Order Approving Amendment #1* at 28

1 ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, or to
2 protect public health and safety.

3
4 In addition to all other conditions referenced or included in this final order, the certificate
5 holder is subject to all conditions and requirements contained in the rules of the Council and in
6 local ordinances and state law in effect on the date the amended site certificate is executed.
7 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety
8 or the environment that requires application of later-adopted laws or rules, the Council may
9 require compliance with such later-adopted laws or rules.

10
11 The Council recognizes that many specific tasks related to the design, construction, operation
12 and retirement of the facility will be undertaken by the certificate holder' agents or contractors.
13 Nevertheless, the certificate holder is responsible for ensuring that all agents and contractors
14 comply with all provisions of the Site Certificate.

15
16 **V. GENERAL CONCLUSION AND FINAL ORDER**

17
18 The proposed amendment would extend the construction and completion deadlines. In
19 addition, the final order includes an amended site certificate that authorizes Golden Hills to
20 construct and operate the facility with Orion and Orion Renewables as its parent companies,
21 subject to terms and conditions set forth herein.

22
23 Based on the findings and conclusions included in this order, the Council makes the following
24 findings:

25
26 (1) The Proposed Amendment #2 to the Golden Hills Site Certificate complies with the
27 requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and
28 ORS 469.590 to ORS 469.619.

29
30 (2) The Proposed Amendment #2 to the Golden Hills Site Certificate complies with the
31 applicable standards adopted by the Council pursuant to ORS 469.501.

32
33 (3) The Proposed Amendment #2 to the Golden Hills Wind Project Site Certificate complies
34 with all other Oregon statutes and administrative rules that were included in and governed
35 by the original site certificate and are applicable to the amendment of the site certificate for
36 the Golden Hills Wind Project.

37
38 (4) Orion, as Golden Hills' new parent company, complies with the standards described in
39 OAR 345-022-0010 and OAR 345-022-0050 and will be lawfully entitled to possession or
40 control of Orion Golden Hills as described in the Site Certificate as amended by this order.

41
42 Accordingly, the Council finds that the proposed amendment complies with the General
43 Standard of Review (OAR 345-022-0000). The Council finds, based on a preponderance of the

1 evidence on the record, that the Site Certificate may be amended and transferred as requested
2 by the certificate holder and transferee.

3
4 **Final Order**

5
6 The Council approves Amendment #2 and issues an amended site certificate for the Golden
7 Hills Wind Project, subject to the terms and conditions set forth above. In addition, the Council
8 approves Orion as the new parent company of Golden Hills subject to the terms and conditions
9 set forth above.

10
11 Issued this 30th day of January, 2015

12
13 The Oregon Energy Facility Siting Council

14
15 By: _____

16 Barry Beyeler, Chair
17 Energy Facility Siting Council

18
19 **Attachments:**

- 20 Attachment A: Redline of Changes to ODOE-Golden Hills Wind Project Site Certificate
21 Attachment B: Amended Site Certificate
22 Attachment C: Raptor Nest Survey Protocol

23
24 **Notice of the Right to Appeal**

25 *The right to appeal this order approving an amendment to a site certificate is provided in ORS*
26 *469.403. Pursuant to ORS 469.403, any party to a contested case proceeding on an amended*
27 *site certificate application may appeal the Council's approval or rejection of the amended site*
28 *certificate application to the Oregon Supreme Court. To appeal you must file a petition for*
29 *judicial review with the Supreme Court within 60 days from the day this order was served on*
30 *you. If this order was personally delivered to you, the date of service is the date you received this*
31 *order. If this order was mailed to you, the date of service is the date it was mailed, not the date*
32 *you received it. if you do not file a petition for judicial review within the 60-day time period, you*
33 *lose your right to appeal*

1 evidence on the record, that the Site Certificate may be amended and transferred as requested
2 by the certificate holder and transferee.

3
4 **Final Order**

5
6 The Council approves Amendment #2 and issues an amended site certificate for the Golden
7 Hills Wind Project, subject to the terms and conditions set forth above. In addition, the Council
8 approves Orion as the new parent company of Golden Hills subject to the terms and conditions
9 set forth above.

10
11 Issued this 30th day of January, 2015

12
13 The Oregon Energy Facility Siting Council

14
15 By: 

16 Barry Beyeler, Chair
17 Energy Facility Siting Council

18
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28 *certificate application to the Oregon Supreme Court. To appeal you must file a petition for*
29 *judicial review with the Supreme Court within 60 days from the day this order was served on*
30 *you. If this order was personally delivered to you, the date of service is the date you received this*
31 *order. If this order was mailed to you, the date of service is the date it was mailed, not the date*
32 *you received it. If you do not file a petition for judicial review within the 60-day time period, you*
33 *lose your right to appeal*

D. CONSTRUCTION DEADLINES

The certificate holder shall satisfy the following administrative conditions:

(III.D.1) The certificate holder shall begin construction of the facility within by June 18, ~~2016~~ 2019 within three years after the effective date of the site certificate. Under OAR 345-015-0085(8)(9), an amended site certificate is effective upon execution by the Council Chair and the applicant. The Council may grant an extension of the deadline to begin construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment 1] [Amendment 2]

(III.D.2) The certificate holder shall complete construction of the facility by June 18, ~~2017~~ 2019. Construction is complete when (1) the facility is substantially complete as defined by the certificate holder's construction contract documents; (2) acceptance testing has been satisfactorily completed; and (3) the energy facility is ready to begin continuous operation consistent with the site certificate. The certificate holder shall promptly notify the Department of the date of completion of construction. The Council may grant an extension of the deadline for completing construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment 1] [Amendment 2]

IV.D LAND USE

(IV.D.22) Prior to construction, Certificate Holder shall demonstrate that the final location of turbines within the micro-siting corridors approved by the Council will satisfy setback requirements prescribed by Section 4 of the Sherman County Wind Setback Ordinance (Ordinance No. 39-2007) unless the Council or Oregon Department of Energy has approved a variance to such setback for the turbine or the Certificate Holder has negotiated a setback agreement with the affected adjacent property owner or wind project developer. [Amendment #1]

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SECOND AMENDED SITE CERTIFICATE
FOR THE
GOLDEN HILLS WIND PROJECT

Issued by

OREGON ENERGY FACILITY SITING COUNCIL
625 Marion Street NE
Salem, OR 97301-3737

PHONE: 503-378-4040

FAX: 503-373-7806

Amending the
Site Certificate for the Golden Hills Wind Project
of May 18, 2012

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1 delegated by the federal government to a State agency other than the Council. ORS
2 469.503(3).

- 3
- 4 4. Both the State and the certificate holder shall abide by local ordinances and State law and
5 the rules of the Council in effect on the date this site certificate is executed. ORS
6 469.401(2). In addition, upon a clear showing of a significant threat to the public health,
7 safety or the environment that requires application of later-adopted laws or rules, the
8 Council may require compliance with such later-adopted laws or rules. ORS 469.401(2).
9
- 10 5. For a permit, license or other approval addressed in and governed by this site certificate,
11 the certificate holder shall comply with applicable State and federal laws adopted in the
12 future to the extent that such compliance is required under the respective State agency
13 statutes and rules. ORS 469.401(2).
14
- 15 6. Subject to the conditions herein, this site certificate binds the State and all counties, cities
16 and political subdivisions in Oregon as to the approval of the site and the construction,
17 operation and retirement of the facility as to matters that are addressed in and governed
18 by this site certificate. ORS 469.401(3).
19
- 20 7. Each affected State agency, county, city and political subdivision in Oregon with
21 authority to issue a permit, license or other approval addressed in or governed by this site
22 certificate shall, upon submission of the proper application and payment of the proper
23 fees, but without hearings or other proceedings, issue such permit, license or other
24 approval subject only to conditions set forth in this site certificate. ORS 469.401(3).
25
- 26 8. After issuance of this site certificate, each State agency or local government agency that
27 issues a permit, license or other approval for the facility shall continue to exercise
28 enforcement authority over such permit, license or other approval. ORS 469.401(3).
29
- 30 9. After issuance of this site certificate, the Council shall have continuing authority over the
31 site and may inspect, or direct the Oregon Department of Energy (“ODOE” or the
32 “Department”) to inspect, or request another State agency or local government to inspect,
33 the site at any time in order to ensure that the facility is being operated consistently with
34 the terms and conditions of this site certificate. ORS 469.430.
35

36 **III. DESCRIPTION**

37 **A. THE FACILITY**

38 **1. The Energy Facility**

39
40
41
42 ORS 469.300(11)(a)(J) defines the “energy facility” in this case as “[a]n electric power
43 generating plant with an average electric generating capacity of 35 megawatts or more if the
44 power is produced from ... wind energy at a single energy facility.” The proposed “electric
45 power generating plant” would consist of up to 267 wind turbine locations, each consisting of a
46 turbine tower and foundation, turbine pad area, nacelle, rotor and blade assembly, and step-up

1 transformer. Wind turbines would be placed in survey corridors as shown in the Application for a
2 Site Certificate. Golden Hills would have a peak electric generating capacity of up to 400 MW
3 and an average electric generating capacity of about 133 MW.
4

5 GHWF has not yet selected the wind turbine model or models that would be installed in
6 the facility. GHWF is requesting a site certificate that would allow the installation of up to 267
7 GE sle 1.5-MW turbines or any combination of turbines subject to specific restrictions. Under
8 maximum conditions, turbine towers would measure up to 80 meters (263 feet) at the rotor hub,
9 and the diameter of the rotor-swept area would be 96 meters (315 feet).
10

11 A wind turbine features a nacelle mounted on a tubular steel tower. The nacelle houses
12 the generator and gearbox and supports the rotor and blades at the hub. The turbine tower
13 supports and provides access to the nacelle. Each turbine unit sits on a concrete pad that
14 accommodates the turbine pedestal, a step-up transformer and a turnout area for service vehicles.
15 The purpose of the step-up transformer is to increase the output voltage of the wind turbine to the
16 voltage of the power collection system. Underlying the pad would be a deep concrete turbine
17 foundation with a surface area dependent upon the type and size of wind turbine selected.
18

19 **2. Related or Supporting Facilities**

20
21 GHWF proposes to construct the following related or supporting facilities:

- 22 • Power collection system
- 23 • Substations
- 24 • 230-kV transmission line
- 25 • 500-kV transmission line
- 26 • Meteorological towers
- 27 • Supervisory Control and Data Acquisition (“SCADA”) System
- 28 • O&M facility
- 29 • Access roads
- 30 • Temporary laydown areas

31
32 **Power Collection System.** About 62 miles of power collection system, operating at 34.5
33 kV, would transport the power from the wind turbines to the substations. Some portion of the
34 power collection system may be installed above ground to avoid impacts or to accommodate
35 unforeseen geotechnical conditions.
36

37 **Substations.** The proposed facility would include two substations, one in the eastern
38 section of the Golden Hills site and another in the western section of the Golden Hills site. Each
39 substation would occupy a graveled and fenced area about 2 acres in size to facilitate a
40 transformer, switching equipment and a parking area.
41

42 **230-kV Transmission Line.** The substation in the eastern section of the Golden Hills site
43 would interconnect with an existing PPM Energy transmission line by means of an aboveground
44 0.7-mile 230-kV transmission line.
45

1 **500-kV Transmission Line.** The substation in the western section of the Golden Hills
2 site would interconnect with the existing BPA John Day Substation by means of an aboveground
3 500-kV transmission line about 11 miles long.
4

5 **Meteorological Towers.** GHWF proposes to install up to six permanent meteorological
6 towers (“met towers”). The met towers would be unguyed tubular structures about 85 meters
7 (279 feet) tall and set in concrete foundations.
8

9 **SCADA System.** A fiber optic communications network would link the wind turbines to
10 a central computer at the O&M facility. The SCADA system would collect operating and
11 performance data from each wind turbine and Golden Hills as a whole and provide for remote
12 operation of the wind turbines.
13

14 **O&M Facility.** A 5,000-square-foot operations and maintenance (“O&M”) building
15 would be constructed at one or the other of two locations proposed by GHWF. The O&M
16 building would house office and workshop areas, a control room for the SCADA system, and a
17 kitchen, bathroom and shower. The five-acre O&M facility site would include parking for
18 vehicles. Domestic water use would not exceed 5,000 gallons per day, and domestic water would
19 be obtained from an on-site well. Domestic wastewater would be drained into an on-site septic
20 system.
21

22 **Access Roads.** Approximately 50 miles of new roads would be constructed to provide
23 access to the turbine strings and other facility components. Access roads would connect to
24 graveled turbine pad areas at the base of each wind turbine. The roads would be 20 feet wide and
25 constructed with crushed gravel. In addition, GHWF would improve and widen some existing
26 county and farm roads.
27

28 **Temporary Laydown Areas.** Up to seven principal, temporary laydown areas would be
29 used to stage construction and store supplies and equipment during construction. In addition,
30 temporary laydown areas would be required at the base of each proposed wind turbine. The
31 laydown areas would be covered with gravel, and the gravel would be removed and the areas
32 would be restored to their pre-construction conditions following completion of construction.
33

34 The certificate holder shall satisfy the following administrative condition:
35

- 36 (III.A.1) The certificate holder shall construct a facility substantially as described in the
37 site certificate and may select GE sle 1.5-megawatt or some combination of other
38 turbines, subject to the following restrictions and compliance with other site
39 certificate conditions. Before beginning construction, the certificate holder shall
40 provide to the Department a description of the turbine types selected for the
41 facility demonstrating compliance with this condition.
- 42 (a) The total number of turbines at the facility must not exceed 267 turbines.
 - 43 (b) The combined peak generating capacity of the facility must not exceed
44 400 megawatts.
 - 45 (c) The turbine hub height must not exceed 80 meters and the maximum blade
46 tip height must not exceed 128 meters.

- 1 (d) The minimum blade tip clearance must be 32 meters above ground.
2 (e) The maximum combined weight of metals in the tower (including ladders
3 and platforms) and nacelle must not exceed 324 U.S. tons per turbine.
4 (f) The certificate holder shall request an amendment of the site certificate to
5 increase the combined peak generating capacity of the facility beyond 400
6 megawatts, to increase the number of wind turbines to more than 267
7 turbines, to install wind turbines with a hub height greater than 80 meters
8 or a blade tip height greater than 128 meters, or to install turbines with a
9 maximum combined weight of metals in the tower (including ladders and
10 platforms) and nacelle greater than 324 U.S. tons per turbine.
11

12 **B. LOCATION OF THE FACILITY**

13

14 The facility will occupy about 30,000 acres and be located near Wasco in Sherman
15 County, Oregon. More particularly, the site would occupy portions of Sections 9, 10, 14-16, 22-
16 26 and 34-36, Township 2 North, Range 16 East; Sections 29-32, Township 2 North, Range 17
17 East; Sections 1-3, 13, 24, 25 and 36, Township 1 North, Range 16 East; Sections 5-8, 14-22, 25
18 and 27-36, Township 1 North, Range 17 East; Sections 1-14, 16 and 17, Township 1 South,
19 Range 17 East; and Sections 6-8, Township 1 South, Range 18 East, Willamette Meridian,
20 Sherman County, Oregon.
21

22 **C. THE SITE AND SITE BOUNDARY**

23

24 The certificate holder shall satisfy the following administrative condition:

- 25
26 (III.C.1) Before beginning construction and after considering all micrositing factors, the
27 certificate holder shall provide to the Department, the Oregon Department of Fish
28 and Wildlife (“ODFW”) and the Planning Director of Sherman County detailed
29 maps of the facility site, showing the final locations where the certificate holder
30 proposes to build facility components and a table showing the acres of temporary
31 and permanent habitat impact by habitat category and subtype. The maps shall
32 include the locations of temporary laydown areas and areas of temporary ground
33 disturbance associated with the construction of all transmission lines. The detailed
34 maps of the facility site shall indicate the habitat categories of all areas that would
35 be affected during construction. In classifying the affected habitat into habitat
36 categories, the certificate holder shall consult with ODFW. The certificate holder
37 shall not begin ground disturbance in an affected area until the habitat assessment
38 has been approved by the Department. The Department may employ a qualified
39 contractor to confirm the habitat assessment by on-site inspection.
40

41 **D. CONSTRUCTION DEADLINES**

42

43 The certificate holder shall satisfy the following administrative conditions:

- 44
45 (III.D.1) The certificate holder shall begin construction of the facility within by June 18,
46 2016 2014. Under OAR 345-015-0085(9), an amended site certificate is effective

1 upon execution by the Council Chair and the applicant. The Council may grant an
2 extension of the deadline to begin construction in accordance with OAR 345-027-
3 0030 or any successor rule in effect at the time the request for extension is
4 submitted. [**Amendment 12**]
5

6 (III.D.2) The certificate holder shall complete construction of the facility by June 18, **2019**
7 **2017**. Construction is complete when (1) the facility is substantially complete as
8 defined by the certificate holder’s construction contract documents; (2)
9 acceptance testing has been satisfactorily completed; and (3) the energy facility is
10 ready to begin continuous operation consistent with the site certificate. The
11 certificate holder shall promptly notify the Department of the date of completion
12 of construction. The Council may grant an extension of the deadline for
13 completing construction in accordance with OAR 345-027-0030 or any successor
14 rule in effect at the time the request for extension is submitted. [**Amendment 12**]
15

16 (III.D.3) Before beginning construction, the certificate holder shall notify the Department
17 in advance of any work on the site that does not meet the definition of
18 “construction” in ORS 469.300(6), excluding surveying, exploration or other
19 activities to define or characterize the site, and shall provide to the Department a
20 description of the work and evidence that its value is less than \$250,000.
21

22 **IV. SPECIFIC FACILITY CONDITIONS**

23
24 The conditions listed in this section include conditions based on representations in the
25 Application for a Site Certificate and supporting record. These conditions are required under
26 OAR 345-027-0020(10). The certificate holder must comply with these conditions in addition to
27 the conditions listed in Sections III, V, VI and VII. This section includes other specific facility
28 conditions the Council finds necessary to ensure compliance with the siting standards of OAR
29 Chapter 345, Divisions 22 and 24, and to protect the public health and safety. For conditions that
30 require subsequent review and approval of a future action, ORS 469.402 authorizes the Council
31 to delegate the future review and approval to the Department if, in the Council’s discretion, the
32 delegation is warranted under the circumstances of the case.
33

34 **A. [PLACEHOLDER]**
35

36 **B. ORGANIZATIONAL EXPERTISE**

37
38 (IV.B.1) **The certificate holder shall report promptly to the Department any change in**
39 **its corporate relationship with Orion Renewable Energy Group LLC ~~BP~~**
40 **~~Alternative Energy North America Inc. (“BPAE”).~~ The certificate holder**
41 **shall report promptly to the Department any change in its access to the**
42 **resources, expertise and personnel of Orion Renewable Energy Group**
43 **LLC~~BPAE~~.**
44

45 (IV.B.2) Before beginning construction, the certificate holder shall notify the Department
46 of the identity and qualifications of the major design, engineering and

1 construction contractor(s) for the facility. The certificate holder shall select
2 contractors that have substantial experience in the design, engineering and
3 construction of similar facilities. The certificate holder shall report to the
4 Department any change of major contractors.
5

6 (IV.B.3) If the certificate holder chooses a third-party contractor to operate the facility, the
7 certificate holder shall submit to the Council the identity of the contractor so the
8 Council may review the qualifications and capability of the contractor to meet the
9 standards of OAR 345-022-0010. If the Council finds that a new contractor meets
10 these standards, the Council shall not require an amendment to the site certificate
11 for the certificate holder to hire the contractor.
12

13 (IV.B.4) Any matter of noncompliance under the site certificate shall be the responsibility
14 of the certificate holder. Any notice of violation issued under the site certificate
15 shall be issued to the certificate holder. Any civil penalties assessed under the site
16 certificate shall be levied on the certificate holder.
17

18 (IV.B.5) The certificate holder shall contractually require the engineering and procurement
19 contractor and all independent contractors and subcontractors involved in the
20 construction and operation of the facility to comply with all applicable laws and
21 regulations and with the terms and conditions of the site certificate. Such
22 contractual provision shall not operate to relieve the certificate holder of
23 responsibility under the site certificate.
24

25 (IV.B.6) The certificate holder shall obtain, or shall ensure that its contractors obtain,
26 necessary federal, State and local permits or approvals required for the
27 construction, operation and retirement of the facility. The certificate holder shall
28 work with local and State fire officials to ensure compliance with all fire code
29 regulations regarding public buildings.
30

31 (IV.B.7) During construction, the certificate holder shall have an on-site assistant
32 construction manager who is qualified in environmental compliance to ensure
33 compliance with all construction-related site certificate conditions. During
34 operation, the certificate holder shall have a facility manager who is qualified in
35 environmental compliance to ensure compliance with all ongoing site certificate
36 conditions. The certificate holder shall notify the Department of the name,
37 telephone number, fax number and e-mail address of these managers and shall
38 keep the Department informed of any change in this information.
39

40 (IV.B.8) Within 72 hours after discovery of conditions or circumstances that may violate
41 the terms or conditions of the site certificate, the certificate holder shall report the
42 conditions or circumstances to the Department.
43

44 **C. RETIREMENT AND FINANCIAL ASSURANCE** 45

- 1 (IV.C.1) The certificate holder shall retire the facility if the certificate holder permanently
2 ceases construction or operation of the facility. The certificate holder shall retire
3 the facility according to a final retirement plan approved by the Council, as
4 described in OAR 345-027-0110, and prepared pursuant to Condition (IV.C.2).
5
- 6 (IV.C.2) Two years before closure of the energy facility, the certificate holder shall submit
7 to the Department a proposed final retirement plan for the facility and site,
8 pursuant to OAR 345-027-0110, including:
9 (a) A plan for retirement that provides for completion of retirement within
10 two years after permanent cessation of operation of the energy facility and
11 that protects the public health and safety and the environment;
12 (b) A description of actions the certificate holder proposes to take to restore
13 the site to a useful, non-hazardous condition suitable for agricultural use;
14 and
15 (c) A detailed cost estimate, a comparison of that estimate with the dollar
16 amount secured by a bond or letter of credit and any amount contained in a
17 retirement fund, and a plan for assuring the availability of adequate funds
18 for completion of retirement.
19
- 20 (IV.C.3) The certificate holder shall prevent the development of any conditions on the site
21 that would preclude restoration of the site to a useful, non-hazardous condition to
22 the extent that prevention of such site conditions is within the control of the
23 certificate holder.
24
- 25 (IV.C.4) Before beginning construction, the certificate holder shall submit to the State
26 through the Council a bond or letter of credit in the amount described herein
27 naming the State, acting by and through the Council, as beneficiary or payee. If
28 the certificate holder elects to build the facility in a single phase, the initial bond
29 or letter of credit amount is \$16,491,000 (in 2008 dollars), adjusted to the date of
30 issuance as described in (b), or the amount determined as described in (a). If the
31 certificate holder elects to build the facility in more than one phase, the amount of
32 the initial bond or letter of credit for each phase of construction shall be the
33 amount determined as described in (a). The certificate holder shall adjust the
34 amount of each bond or letter of credit on an annual basis thereafter as described
35 in (b).
36 (a) The certificate holder may adjust the amount of each bond or letter of
37 credit based on the final design configuration of the facility by applying
38 the unit costs and general costs illustrated in Table IV.C.1 of the Final
39 Order on the Application to the final design and calculating the financial
40 assurance amount as described in that order, adjusted to the date of
41 issuance as described in (b) and subject to approval by the Department.
42 (b) The certificate holder shall adjust the amount of each bond or letter of
43 credit, using the following calculation and subject to approval by the
44 Department:
45 (i) Adjust the subtotal component of the bond or letter of credit
46 amount (expressed in 2008 dollars) to present value, using the U.S.

1 Gross Domestic Product Implicit Price Deflator, Chain-Weight, as
2 published in the Oregon Department of Administrative Services’
3 “Oregon Economic and Revenue Forecast” or by any successor
4 agency (the “Index”) and using the annual average index value for
5 2008 dollars and the quarterly index value for the date of issuance
6 of the new bond or letter of credit. If at any time the Index is no
7 longer published, the Council shall select a comparable calculation
8 to adjust 2008 dollars to present value.

- 9 (ii) Calculate the adjusted performance bond amount as 1 percent of
10 the new subtotal (i).
- 11 (iii) Add the subtotal (i) to the adjusted performance bond amount (ii)
12 for the adjusted gross cost.
- 13 (iv) Calculate the adjusted administration and project management
14 costs as 10 percent of the adjusted gross cost (iii).
- 15 (v) Calculate the adjusted future developments contingency as 10
16 percent of the adjusted gross cost (iii).
- 17 (vi) Add the adjusted gross cost (iii) to the sum of adjusted
18 administration and project management costs (iv) and the adjusted
19 future developments contingency (v) and round the resulting total
20 to the nearest \$1,000 to determine the adjusted financial assurance
21 amount.
- 22 (c) The certificate holder shall use a form of bond or letter of credit approved
23 by the Council.
- 24 (d) The certificate holder shall use an issuer of the bond or letter of credit
25 approved by the Council.
- 26 (e) The certificate holder shall describe the status of the bond or letter of
27 credit in the annual report submitted to the Council under Condition
28 (VII.21.a.ii).
- 29 (f) The bond or letter of credit shall not be subject to revocation or reduction
30 before retirement of the facility site.

31
32 (IV.C.5) If the certificate holder elects to use a bond to meet the requirements of Condition
33 (IV.C.4), the certificate holder shall ensure that the surety is obligated to comply
34 with the requirements of applicable statutes, Council rules and this site certificate
35 when the surety exercises any legal or contractual right it may have to assume
36 construction, operation or retirement of the energy facility. The certificate holder
37 shall also ensure that the surety is obligated to notify the Council that it is
38 exercising such rights and to obtain any Council approvals required by applicable
39 statutes, Council rules and this site certificate before the surety commences any
40 activity to complete construction, operate or retire the energy facility.

41
42 (IV.C.6) The certificate holder shall report to the Department any release of hazardous
43 substances, pursuant to Oregon Department of Environmental Quality (“DEQ”) regulations,
44 within one working day after the discovery of such release. This
45 obligation shall be in addition to any other reporting requirements applicable to
46 such a release.

- 1
2 (IV.C.7) If the certificate holder has not remedied a release consistent with applicable
3 Oregon DEQ standards within six months after the date of the release, the
4 certificate holder shall submit to the Council for its approval an independently
5 prepared estimate of the additional cost of remediation or correction within such
6 six-month period.
7 (a) Upon approval of an estimate by the Council, the certificate holder shall
8 increase the amount of its bond or letter of credit by the amount of the
9 estimate.
10 (b) In no event, however, shall the certificate holder be relieved of its
11 obligation to exercise all due diligence in remedying a release of
12 hazardous substances.
13
14 (IV.C.8) All funds received by the certificate holder from the salvage of equipment and
15 buildings shall be committed to the restoration of the energy facility site to the
16 extent necessary to fund the approved site restoration and remediation.
17
18 (IV.C.9) The certificate holder shall pay the actual cost to restore the site to a useful, non-
19 hazardous condition at the time of retirement, notwithstanding the Council's
20 approval in the site certificate of an estimated amount required to restore the site.
21
22 (IV.C.10) If the Council finds that the certificate holder has permanently ceased
23 construction or operation of the facility without retiring the facility according to a
24 final retirement plan approved by the Council, as described in OAR 345-027-0110
25 and prepared pursuant to Condition (IV.C.2), the Council shall notify the
26 certificate holder and request that the certificate holder submit a proposed final
27 retirement plan to the Department within a reasonable time not to exceed 90 days.
28 (a) If the certificate holder does not submit a proposed final retirement plan
29 by the specified date or if the Council rejects the retirement plan that the
30 certificate holder submits, the Council may direct the Department to
31 prepare a proposed a final retirement plan for the Council's approval.
32 (b) Upon the Council's approval of the final retirement plan prepared pursuant
33 to (a), the Council may draw on the bond or letter of credit described in
34 Condition (IV.C.4) and shall use the funds to restore the site to a useful,
35 non-hazardous condition according to the final retirement plan, in addition
36 to any penalties the Council may impose under OAR Chapter 345,
37 Division 29.
38 (c) If the amount of the bond or letter of credit is insufficient to pay the actual
39 cost of retirement, the certificate holder shall pay any additional cost
40 necessary to restore the site to a useful, non-hazardous condition.
41 (d) After completion of site restoration, the Council shall issue an order to
42 terminate the site certificate if the Council finds that the facility has been
43 retired according to the approved final retirement plan.
44

45 **D. LAND USE**
46

- 1 (IV.D.1) The certificate holder shall construct the public road improvements described in
2 the Application for a Site Certificate to meet or exceed road standards for the road
3 classifications in the County’s Transportation System Plan and Zoning Ordinance
4 because roads will require a more substantial section to bear the weight of the
5 vehicles and turbine components than would usually be constructed by the
6 County.
7
- 8 (IV.D.2) The certificate holder shall ensure that no equipment or machinery is parked or
9 stored on any county road except while in use.
10
- 11 (IV.D.3) The site certificate holder shall, in consultation with affected landowners, design
12 and construct private access roads to minimize the division of existing farm units.
13
- 14 (IV.D.4) The certificate holder shall not locate any aboveground facility structure
15 (including wind turbines, O&M building, substations and met towers, but not
16 including aboveground power collection and transmission lines and poles and
17 junction boxes) within 50 feet from any property line or within 50 feet from the
18 right of way of any arterial or major collector road.
19
- 20 (IV.D.5) Aboveground transmission line structures shall not occupy areas that show gross
21 indicators of landslide activity or marginal stability.
22
- 23 (IV.D.6) Collector lines in the Natural Hazards Combining Zone (“NH zone”) shall be
24 placed under ground except in instances where it is more practical to install
25 aboveground power collection lines and provided that the aboveground power
26 collection lines will be designed to minimize slope stability and other NH zone
27 hazards. The site-specific geotechnical investigation required prior to construction
28 shall address native soil and bedrock stability concerns at cuts, fills and culvert
29 crossings, and shall include design and construction recommendations to
30 minimize the potential for destabilizing marginally stable slopes and the potential
31 for stream erosion.
32
- 33 (IV.D.7) Prior to start of construction, the certificate holder shall submit for Sherman
34 County Planning Department concurrence the plans and profiles described at
35 SCZO 3.7.5(e).
36
- 37 (IV.D.8) Construction staging areas shall be limited to areas outside the NH zone.
38
- 39 (IV.D.9) Roads or streets in the NH zone shall be stabilized by planking, gravel or
40 pavement as deemed necessary, and roadways shall be built without installation of
41 excessive fill, diversion of water or excessive cuts unless the site investigation
42 determines that such conditions will not be detrimental to the area or create
43 unwarranted maintenance problems or additional hazards.
44
- 45 (IV.D.10) The certificate holder shall locate access roads and temporary construction
46 laydown and staging areas, including those associated with construction of

1 transmission lines or placement of conductors on third-party transmission lines, to
2 minimize disturbance with farming practices and, wherever feasible, as
3 determined in consultation with affected landowners, shall place turbines and
4 transmission interconnection lines along the margins of cultivated areas to reduce
5 the potential for conflict with farm operations. The certificate holder shall place
6 aboveground transmission and collector lines and poles and junction boxes along
7 property lines and public road rights-of-way to the extent practicable.
8

9 (IV.D.11) During operation of the facility, the certificate holder, in cooperation with
10 landowners, shall avoid impact on cultivated land to the extent reasonably
11 possible when performing facility repair and maintenance activities.
12

13 (IV.D.12) Where necessary and feasible, the certificate holder shall provide access across
14 construction trenches to fields within the facility site and otherwise provide
15 adequate and timely access to properties during critical periods in the farming
16 cycle, such as harvest.
17

18 (IV.D.13) Before beginning construction of the facility, the certificate holder shall record a
19 Farm Management Easement covering the properties on which the certificate
20 holder locates wind power generation facilities. The certificate holder shall record
21 the easements in the real property records of Sherman County and shall file a
22 copy of the recorded easement with the Sherman County Planning Director.
23

24 (IV.D.14) The certificate holder shall remove from Special Farm Assessment the portions of
25 parcels on which facilities are located and shall pay all property taxes due and
26 payable after the Special Farm Assessment is removed from such properties.
27

28 (IV.D.15) Within 90 days after beginning operation, the certificate holder shall provide to
29 the Department and to the Sherman County Planning Director the actual latitude
30 and longitude location or Stateplane NAD 83(91) coordinates of each turbine
31 tower, connecting lines and transmission lines. In addition, the certificate holder
32 shall provide to the Department and to the Sherman County Planning Director, a
33 summary of as-built changes in the facility compared to the original plan, if any.
34

35 (IV.D.16) The certificate holder shall work with the Sherman County Weed Control
36 manager to take appropriate measures to prevent the invasion, during and after the
37 facility's construction, of any weeds on the Sherman County noxious weed list.
38

39 (IV.D.17) The certificate holder shall cooperate with the Sherman County Road Department
40 to ensure that any unusual damage or wear caused by the use of the county's
41 roads by the developer during the construction of the facility will be the
42 responsibility of the developer. The Road Department will provide an assessment
43 of road conditions in the facility area prior to the start of construction of the
44 facility and an evaluation of the roads following completion of the facility to
45 determine any significant change in condition. In addition, no equipment or

1 machinery of the developers shall be parked or stored on any county road except
2 while in use.

3
4 (IV.D.18) Prior to start of construction, the certificate holder shall, in consultation with
5 Sherman County, assign a 9-1-1 5-digit rural address to every tower road that
6 intersects a State or county road. The county will provide and install the signage
7 for these addresses.

8
9 (IV.D.19) Prior to beginning construction, the certificate holder will:
10 (a) Designate a route or routes for the transport of wind turbine construction
11 material (including water, aggregate, concrete, machinery and tower
12 pieces), with the intention of minimizing damage to non-designated roads,
13 and provide these designations to the County Road Master;
14 (b) Provide to the County Road Master a written summary of possible
15 anticipated road damage to the designated route or routes, and an estimate
16 of the cost of repair to the designated route or routes;
17 (c) Establish and maintain an escrow account for so long as construction is
18 ongoing, funded in an amount equal to the estimated cost to repair the
19 designated route or routes consistent with the estimate provided in (b); and
20 (d) Conduct an inspection of the roads along the designated route or routes
21 before and after construction with a representative of the Sherman County
22 Road Department and an independent third party with the required
23 expertise to inspect and evaluate paved and graveled roads. In the event a
24 dispute arises, the third party shall be the final arbiter. The cost of the
25 hiring of the third party shall be borne by the applicant.

26
27 (IV.D.20) Before beginning construction of facility access roads, the certificate holder shall
28 confer with the Sherman County Road Master regarding any utility permits
29 needed for county road right-of-ways and obtain permits for construction of all
30 approach roads onto county roads, all in accordance with Sherman County
31 Ordinance No. 35-2007.

32
33 (IV.D.21) The certificate holder shall comply with Sherman County Zoning Ordinance
34 Section 4.14.4, Access Connection and Driveway Design, in connection with
35 construction of the O&M facility and substations.

36
37 (IV.D.22) Prior to construction, Certificate Holder shall demonstrate that the final location
38 of turbines within the micrositing corridors approved by the Council will satisfy
39 setback requirements prescribed by Section 4 of the Sherman County Wind
40 Setback Ordinance (Ordinance No. 39-2007) unless the Council or Oregon
41 Department of Energy has approved a variance to such setback for the turbine or
42 the Certificate Holder has negotiated a setback agreement with the affected
43 adjacent property owner or wind project developer. [Amendment #1]

44
45 **E. SOIL PROTECTION**

- 1 (IV.E.1) The certificate holder shall conduct all construction work in compliance with an
2 Erosion and Sediment Control Plan (the “ESCP”) satisfactory to the Oregon DEQ
3 and as required under the National Pollutant Discharge Elimination System Storm
4 Water Discharge General Permit #1200-C. The certificate holder shall include in
5 the ESCP any procedures necessary to meet local erosion and sediment control
6 requirements or storm water management requirements.
7
- 8 (IV.E.2) Where temporary impacts will occur in cultivated areas, the certificate holder
9 shall salvage approximately three feet of topsoil and stockpile this topsoil in
10 windrows. The certificate holder shall protect the windrows with plastic sheeting
11 or mulch. Upon removal of the temporary features, the certificate holder shall
12 cultivate the subsoil to a depth of at least 12 inches (except where bedrock
13 prohibits achieving this depth) and then redistribute the salvaged topsoil to match
14 adjacent grades.
15
- 16 (IV.E.3) During facility operation, the certificate holder shall routinely inspect and
17 maintain all roads, pads and trenched areas and, as necessary, maintain or repair
18 erosion control measures. The certificate holder shall restore areas that are
19 temporarily disturbed during facility maintenance or repair activities to
20 predisturbance condition or better.
21
- 22 (IV.E.4) During construction and operation of the facility, the certificate holder shall
23 implement a plan, developed in consultation with the Sherman County Weed
24 Control manager, to control the introduction and spread of noxious weeds.
25
- 26 (IV.E.5) During construction, the certificate holder shall ensure that the wash down of
27 concrete trucks occurs only at a contractor-owned batch plant or at tower
28 foundation locations. If such wash down occurs at tower foundation locations,
29 then the certificate holder shall ensure that wash down wastewater does not run
30 off the construction site into otherwise undisturbed areas and that the wastewater
31 is disposed of on backfill piles and buried underground with the backfill over the
32 tower foundation.
33
- 34 (IV.E.6) During facility operation, if blade-washing becomes necessary, the certificate
35 holder shall ensure that there is no runoff of wash water from the site or
36 discharges to surface waters, storm sewers or dry wells. The certificate holder
37 shall not use acids, bases or metal brighteners with the wash water. The certificate
38 holder may use biodegradable, phosphate-free cleaners sparingly.
39

40 **F. PROTECTED AREAS**

41 [No conditions]

42

43 **G. SCENIC RESOURCES**

44

- 45 (IV.G.1) To reduce the visual impact of the facility, the certificate holder shall:

- (a) Mount nacelles on smooth steel structures painted uniformly in a neutral color to blend with the surrounding landscape;
- (b) Paint substation structures in a neutral color to blend with the surrounding landscape;
- (c) Not allow any advertising to be used on any part of the facility;
- (d) Use only those signs required for facility safety or required by law, except that the certificate holder may erect a sign to identify the facility; and
- (e) Maintain any signs allowed under this condition in good repair.

(IV.G.2) The certificate holder shall design and construct the O&M facility to be generally consistent with the character of similar buildings used by commercial farmers or ranchers in the area and shall paint the building in a neutral color to blend with the surrounding landscape.

- (IV.G.3) During operation of the facility, the certificate holder shall not use exterior nighttime lighting except:
- (a) The minimum turbine tower lighting required or recommended by the Federal Aviation Administration (the “FAA”);
 - (b) Security lighting at the O&M facility and substations, provided that such lighting is shielded or directed downward to reduce glare;
 - (c) Minimum lighting necessary for repairs or emergencies; and
 - (d) As otherwise required by federal, State or local law.

H. RECREATION
[No conditions]

I. PUBLIC HEALTH AND SAFETY STANDARDS

(IV.I.1) The certificate holder shall follow manufacturer’s recommended handling instructions and procedures to prevent damage to turbine or turbine tower components that could lead to failure.

(IV.I.2) The certificate holder shall install and maintain self-monitoring devices on each turbine, connected to a fault annunciation panel or SCADA system at the O&M facility to alert operators to potentially dangerous conditions. The certificate holder shall equip each turbine with vibration-sensing equipment that will shut down the turbine in the event of abnormal levels of vibration.

(IV.I.3) The certificate holder shall construct turbine towers with no exterior ladders or access to the turbine blades and shall install locked tower access doors. The certificate holder shall keep tower access doors locked at all times except when authorized personnel are present.

(IV.I.4) The certificate holder shall have an operational safety-monitoring program and shall inspect all turbines and turbine tower components on a regular basis. The

1 certificate holder shall maintain or repair turbine and turbine tower components as
2 necessary to protect public safety.

3
4 (IV.I.5) For turbine types having pad-mounted step-up transformers, the certificate holder
5 shall install the transformers at the base of each tower in locked cabinets designed
6 to protect the public from electrical hazards and to avoid creation of artificial
7 habitat for raptor prey.

8
9 (IV.I.6) To protect the public from electrical hazards, the certificate holder shall enclose
10 the facility substations with appropriate fencing and locked gates.

11
12 (IV.I.7) Before beginning construction, the certificate holder shall submit to the FAA and
13 the Oregon Department of Aviation (“ODA”) a Notice of Proposed Construction
14 or Alteration identifying the proposed final locations of the turbines and related or
15 supporting facilities and shall provide a copy of this notice to the Department. The
16 certificate holder shall notify the Department of the FAA’s and ODA’s responses
17 as soon as they have been received.

18
19 (IV.I.8) The certificate holder shall construct all facility components in compliance with
20 the following setback requirements:
21 (a) The certificate holder shall maintain a minimum distance of 110 percent of
22 maximum blade tip height, measured from the centerline of the turbine
23 tower to the nearest edge of any public road right-of-way. The certificate
24 holder shall assume a minimum right-of-way width of 60 feet.
25 (b) The certificate holder shall maintain a minimum distance of 1,320 feet,
26 measured from the centerline of the turbine tower to the center of the
27 nearest residence existing at the time of tower construction.
28 (c) The certificate holder shall maintain a minimum distance of 110 percent of
29 maximum blade tip height, measured from the centerline of the turbine
30 tower to the nearest boundary of the certificate holder’s lease area.

31
32 **J. SITING STANDARDS FOR WIND ENERGY FACILITIES**
33 [No conditions]

34
35 **K. SITING STANDARDS FOR TRANSMISSION LINES**

36
37 (IV.K.1) The certificate holder shall install the underground segments of the 34.5-kV
38 collector system at a minimum depth of three feet.

39
40 **L. THREATENED AND ENDANGERED SPECIES**

41
42 (IV.L.1) If construction of the facility begins after 2009, the certificate holder shall review
43 the Oregon Natural Heritage Information Center and U.S. Fish and Wildlife
44 Service databases and consult with an expert designated by ODFW on an annual
45 basis before beginning construction to determine whether nesting bald eagles or
46 peregrine falcons have been documented to occur within two miles of the facility.

1 The certificate holder shall report the results of the database review and
2 consultation to the Department and to ODFW and, if there have been new
3 documentations of nesting bald eagles or peregrine falcons within two miles of
4 the facility, the certificate holder shall implement appropriate measures to protect
5 the species from adverse impact, as approved by the Department and ODFW.
6

- 7 (IV.L.2) The certificate holder shall implement measures to mitigate impacts to sensitive
8 wildlife habitat during construction including, but not limited to, the following:
9 (a) Preparing maps to show sensitive areas, such as nesting or denning areas
10 for sensitive wildlife species, that are off limits to construction personnel;
11 (b) Ensuring that a qualified person instructs construction personnel to be
12 aware of wildlife in the area and to take precautions to avoid injuring or
13 destroying wildlife or significant wildlife habitat; and
14 (c) Avoiding unnecessary road construction, temporary disturbance and
15 vehicle use.
16

17 **(IV.L.3) Prior to the beginning of construction of the facility the certificate holder**
18 **shall perform new field surveys for threatened and endangered species**
19 **following the survey protocol set forth in the Application for Site Certificate.**
20 **The certificate holder shall report the results of the field surveys to the**
21 **Department, ODFW, and the Oregon Department of Agriculture. If the**
22 **surveys identify the presence of threatened or endangered species within the**
23 **site boundary, the certificate holder shall implement appropriate measures to**
24 **avoid a significant reduction in the likelihood of survival or recovery of the**
25 **species, as approved by the Department, ODFW, and the Oregon**
26 **Department of Agriculture.**
27
28

29 M. FISH AND WILDLIFE HABITAT

- 30
31 (IV.M.1) The certificate holder shall implement the Habitat Mitigation and Revegetation
32 Plan submitted by the certificate holder in its August 2008 application supplement
33 and attached to the Final Order as Attachment B, as amended from time to time.
34 Prior to start of construction, the certificate holder shall acquire the legal right to
35 create, enhance, maintain and protect a habitat mitigation area so long as the site
36 certificate is in effect by means of outright purchase, conservation easement or
37 similar conveyance and shall provide a copy of the documentation to the
38 Department. The nominal lease term shall be at least 30 years, with an option to
39 extend if the facility continues operations past year 30. The mitigation area shall
40 be as shown in figures 1, 2 and 3 of Attachment B to the Final Order. Any
41 different mitigation area shall require prior approval of the Department in
42 consultation with ODFW.
43
44 (IV.M.2) The certificate holder shall restore areas outside the permanent footprint that are
45 disturbed during construction according to the methods and monitoring
46 procedures described in the revegetation plan included in the Final Order as

1 Attachment B and as amended from time to time. Mitigation and restoration
2 requirements in the plan shall apply to all laydown areas and other areas of
3 temporary disturbance, including those associated with construction of
4 transmission lines.

5
6 (IV.M.3) Permanent met towers shall not have guy wires.

7
8 (IV.M.4) The certificate holder shall survey the status of known raptor nests within 0.5
9 miles before ground-disturbing activities begin. If an active nest is found, and
10 ground-disturbing activities are scheduled to begin before the end of the sensitive
11 nesting and breeding season (mid-April to mid-August), the certificate holder will
12 not engage in ground-disturbing activities within a 0.25-mile buffer around the
13 nest until the nest fledges young or the nest fails, unless ODFW approves an
14 alternative plan. If ground-disturbing construction activities continue into the
15 sensitive nesting and breeding season for the following year, the certificate holder
16 will not engage in ground-disturbing activities within the 0.25-mile buffer if the
17 nest site is found to be active until the nest fledges young or the nest fails, unless
18 ODFW approves an alternate plan.

19
20 (IV.M.5) The certificate holder will survey the status of known loggerhead shrikes nests
21 and visit sites where non-nesting loggerhead shrikes were observed in order to
22 determine old and new nest sites. Ground-disturbing activities will be sequenced
23 with active raptor nests, using a 150-meter buffer.

24
25 (IV.M.6) Trees in Category 3 upland tree habitat shall not be physically harmed or
26 removed.

27
28 (IV.M.7) The certificate holder shall conduct wildlife monitoring as described in the
29 Wildlife Monitoring and Mitigation Plan that is included as Attachment A to the
30 Final Order and as amended from time to time.

31
32 (IV.M.8) The certificate holder shall design and construct all aboveground transmission line
33 support structures following the practices suggested by the Avian Powerline
34 Interaction Committee (APLIC 1996, referenced in the Application for a Site
35 Certificate, at P-33) and shall install anti-perching devices on transmission pole
36 tops and cross arms where the poles are within the site or are located within one-
37 quarter mile of any wind turbine.

38
39 (IV.M.9) The certificate holder may construct turbines and other facility components within
40 the 900-foot corridors shown on Figures P-1 through P-10 of the Application for a
41 Site Certificate and August 2008 supplement, subject to the following
42 requirements addressing potential habitat impact:

- 43 (a) The certificate holder shall not construct any facility components within
44 areas of Category 1 or Category 2 habitat and shall avoid temporary
45 disturbance of Category 1 or Category 2 habitat, except for those acreages
46 allowed in Table IV.M.1 in the Final Order.

1 (b) The certificate holder shall design and construct facility components that
2 are the minimum size needed for safe operation of the energy facility.
3

4 (IV.M.10) During construction, the certificate holder shall protect the area within a 1300-
5 foot buffer around any active nests of the following species during the sensitive
6 period, as provided in this condition:
7

Species	Sensitive Period	Early Release Date
Swainson's hawk	April 1 to August 15	May 31
Golden eagle	February 1 to August 31	May 31
Ferruginous hawk	March 15 to August 15	May 31
Burrowing owl	April 1 to August 15	July 15

8
9 The 1300-foot buffer may be reduced, with Department approval, if there is an
10 adequate physical barrier between the nest site and the construction impacts such
11 that a 1300-foot buffer proves to be excessive.
12

13 During the year in which construction of any phase occurs, the certificate holder
14 shall use a protocol approved by ODFW to determine whether there are any active
15 nests of these species within a half-mile of any areas that would be disturbed
16 during construction. If a nest is occupied by any of these species after the
17 beginning of the sensitive period, the certificate holder shall not engage in high-
18 impact construction activities (activities that involve blasting, grading or other
19 major ground disturbance) or allow high levels of construction traffic within 1300
20 feet of the nest site, or such lesser distance as may be approved by the Department
21 in the event there is an adequate physical barrier between the nest site and the
22 construction impacts.
23

24 In addition, the certificate holder shall flag the boundaries of the 1300-foot buffer
25 area, or such lesser distance as may be approved by the Department in the event
26 there is an adequate physical barrier between the nest site and the construction
27 impacts, and shall instruct construction personnel to avoid any unnecessary
28 activity within the buffer area. The certificate holder shall direct a qualified
29 independent third-party biological monitor, as approved by the Department, to
30 observe the active nest sites during the sensitive period for signs of disturbance
31 and to notify the Department of any noncompliance with this condition. If the
32 monitor observes nest site abandonment or other adverse impact to nesting
33 activity, the certificate holder shall implement appropriate mitigation, in
34 consultation with ODFW and subject to the approval of the Department, unless
35 the adverse impact is clearly shown to have a cause other than construction
36 activity. The certificate holder may begin or resume high-impact construction
37 activities before the ending day of the sensitive period if any known nest site is
38 not occupied by the early release date. If a nest site is occupied, then the
39 certificate holder may begin or resume high-impact construction before the ending
40 day of the sensitive period with the approval of ODFW, but after the young are
41 fledged. The certificate holder shall use a protocol approved by ODFW to

1 determine when the young are fledged (meaning the young are independent of the
2 core nest site).
3

4 **(IV.M.11) The certificate holder shall conduct two (2) years of raptor nest surveys with**
5 **at least one (1) year of the surveys occurring prior to the beginning of**
6 **construction. The raptor nest surveys shall be conducted following the**
7 **instructions set forth in the Raptor Nest Survey Protocol for Golden Hills**
8 **Wind Project included as Attachment C to the Second Amended Site**
9 **Certificate.**

10
11 **V. STANDARDS NOT APPLICABLE TO SITE CERTIFICATE ELIGIBILITY**
12

13 Under ORS 469.501(4), the Council may issue a site certificate without making the
14 findings required by the standards discussed in this section (Structural Standard; Historic,
15 Cultural and Archaeological Resources Standard; Public Services Standard; and Waste
16 Minimization Standard). Nevertheless, the Council may impose site certificate conditions based
17 on the requirements of these standards.
18

19 **A. STRUCTURAL STANDARD**
20

21 (V.A.1) The certificate holder shall submit a site-specific geotechnical investigation report
22 to the Oregon Department of Geology & Mineral Industries (“DOGAMI”). The
23 investigation and report shall conform to the Oregon State Board of Geologist
24 Examiners guidelines titled “Guidelines for Engineering Geologic Reports” and
25 “Guidelines for Site-Specific Seismic Hazard Reports for Essential and
26 Hazardous Facilities and Major and Special-Occupancy Structures in Oregon.”
27 The certificate holder shall provide the Department with the report and with
28 evidence of concurrence by DOGAMI prior to start of construction.
29

30 (V.A.2) The certificate holder shall instruct the consulting geologist and engineer to study
31 slope stability issues and include conclusions and recommendations about slope
32 stability in the site-specific geotechnical report.
33

34 (V.A.3) The certificate holder shall design and construct the facility in accordance with
35 requirements set forth by the State’s Building Code Division and any other
36 applicable codes and design procedures.
37

38 (V.A.4) The certificate holder shall design, engineer and construct the facility to avoid
39 dangers to human safety presented by non-seismic hazards. As used in this
40 condition, “non-seismic hazards” include settlement, landslides, flooding and
41 erosion.
42

43 (V.A.5) The certificate holder shall ensure that wind turbine corridors and major structures
44 are constructed with sufficient setbacks from all steeper slopes to minimize the
45 potential for creating unstable or marginally stable conditions.
46

1 **B. HISTORIC, CULTURAL AND ARCHAEOLOGICAL RESOURCES STANDARD**

2
3 (V.B.1) The certificate holder shall design the facility to avoid impacts to sites 35SH217,
4 35SH220, GH site 6 (above ground resource), 35SH219 and GH Isolate 6.

5
6 (V.B.2) For sites 35SH215, 35SH216 and 35SH221, the certificate holder shall avoid
7 impacts to these sites during construction and subsequent operations. The
8 certificate holder shall develop a Cultural Resource Management Plan (the
9 “CRMP”) that includes a 30-meter buffer area around these listed sites designated
10 as a “no-work zone” for all ground-disturbing activities. The certificate holder
11 shall submit the CRMP to the State Historic Preservation Office (the “SHPO”) for
12 concurrence and shall provide to the Department documentation confirming
13 SHPO concurrence prior to start of construction.

14
15 (V.B.3) The certificate holder shall consult with the SHPO regarding the development of a
16 CRMP that will address the protection of aboveground historic resources and
17 belowground archeological resources. The CRMP shall include established
18 protocol and procedures for unanticipated discoveries, such as the discovery of
19 new archeological sites or Native American human remains during ground-
20 disturbing activities, and shall document how these protocols will follow State
21 laws and rules at ORS 358.905-961, ORS 390.235, OAR 736-051-0090 and ORS
22 97.740-760 as in effect on the date of this site certificate.

23
24 (V.B.4) Before beginning construction of any phase of the facility, the certificate holder
25 shall provide to the Department a map showing the final design locations of all
26 components of that phase of the facility and areas that would be temporarily
27 disturbed during construction, and also showing the areas surveyed by Tetra Tech
28 in preparing the Archeological Inventory for Golden Hills Wind Energy
29 Development included in the Application for a Site Certificate as Attachment S-1.
30 If there are any additional areas where ground-disturbing activities will occur that
31 were not part of the original facility area, the certificate holder shall contact the
32 SHPO to determine whether there will be additional impacts to cultural resources.

33
34 (V.B.5) The certificate holder shall ensure that a qualified archaeologist instructs
35 construction personnel on the identification of cultural resources

36
37 (V.B.6) If any cultural resources are discovered during construction activities, all work at
38 that location shall cease immediately and the certificate holder shall contact the
39 SHPO to determine whether it is necessary to have an archeologist travel to the
40 worksite and assess the discovery or monitor construction activities.

41
42 (V.B.7) “No access” buffers shall be identified on construction plans and temporarily
43 demarcated in the field before and during construction. The facility
44 Environmental Inspector shall monitor flagged “no access” buffers around
45 archeological sites during construction to prevent accidental damage to cultural
46 resources. These flags or markers shall not be moved or removed during

1 construction activities, and construction personnel shall be advised of these
2 restrictions.

3
4 (V.B.8) The certificate holder shall ensure that construction personnel cease all ground-
5 disturbing activities in the immediate area if any archaeological or cultural
6 resources are found during construction of the facility until a qualified
7 archaeologist can evaluate the significance of the find. No construction personnel
8 will be allowed in the discovery area except for facility management in
9 consultation with the SHPO. The certificate holder shall notify the Department
10 and the SHPO of the find. If the SHPO determines that the resource is significant,
11 the certificate holder shall make recommendations to the Council for mitigation,
12 including avoidance or data recovery, in consultation with the Department, the
13 SHPO, the appropriate Oregon tribes and other appropriate parties. The certificate
14 holder shall not restart work in the affected area until the certificate holder has
15 demonstrated to the Department that it has complied with State archaeological
16 protection and archaeological permit laws in coordination with the SHPO.

17
18 (V.B.9) The certificate holder shall ensure that construction personnel proceed carefully in
19 the vicinity of the mapped alignment of the Oregon Trail. If any intact physical
20 evidence of the trail is discovered, the certificate holder shall avoid any
21 disturbance to the intact segments by redesign, reengineering or restricting the
22 area of construction activity. The certificate holder shall promptly notify the
23 Department and the SHPO of the discovery. The certificate holder shall consult
24 with the Department and with the SHPO to determine appropriate mitigation
25 measures.

26
27 (V.B.10) Upon completion of construction, the certificate holder shall consult with the
28 Oregon Historic Trails Advisory Council regarding the appropriate content of an
29 interpretive sign. After such consultation, the certificate holder shall place in a
30 publicly accessible location a sign giving notice of the historic background of the
31 facility site and surrounding areas.

32
33 **C. PUBLIC SERVICES STANDARD**

34
35 (V.C.1) During operation of the facility, the certificate holder shall obtain water for on-
36 site use from one well located at the O&M facility, subject to compliance with
37 applicable permit requirements. During operation of the facility, the certificate
38 holder shall not use more than 5,000 gallons of water per day from the on-site
39 well.

40
41 (V.C.2) During construction and operation of the facility, the certificate holder shall install
42 on-site security and shall require on-site security personnel to establish a line of
43 communication with the Sherman County Sheriff's Office to regularly report on
44 the status of on-site security operations.

45

1 (V.C.3) — During construction and operation of the facility, the certificate holder shall
2 develop and coordinate response protocols with the North Sherman Fire
3 Protection District, the Moro Rural Fire Protection District and other wind energy
4 facility operators in the vicinity of the facility.

5 **Before beginning construction the certificate holder shall develop and**
6 **implement a fire safety and response plan for both construction and**
7 **operation phases in consultation with the Oregon State Fire Marshal, the**
8 **Sherman County Emergency Services, North Sherman Fire and Rescue,**
9 **Moro Rural Fire Protection District and other first-response agencies the**
10 **facility will rely upon for fire protection services. A copy of the plan must be**
11 **provided to the Department at least 30 days before beginning construction.**
12 **The plan must be updated at least annually by the agencies identified in (a)**
13 **below and a copy provided to the agencies identified in (a), (b), and (c) and to**
14 **the Department within 30 days of the update. The fire safety and response**
15 **plan shall address, at a minimum, the following:**

- 16 a. **Identification of agencies that participated in developing the plan;**
- 17 b. **Identification of agencies that are designated as first response agencies or are**
18 **included in any mutual aid agreements with the facility;**
- 19 c. **A list of any other mutual aid agreements or fire protection associations in**
20 **the vicinity of the facility;**
- 21 d. **Complete contact information for each agency listed in (a), (b), and (c) above,**
22 **including at least two facility contacts available on a 24-hour basis;**
- 23 e. **Communication protocols for both routine and emergency events and the**
24 **incident command system to be used in the event a fire response by multiple**
25 **agencies is needed at the facility;**
- 26 f. **Access and fire response at the facility site during construction and**
27 **operations. Fire response plans during construction shall address regular**
28 **and frequent communication amongst the agencies regarding the number**
29 **and location of construction sites within the site boundary, access roads that**
30 **are completed and those still under construction, location of water**
31 **receptacles, and a temporary signage system until permanent addresses and**
32 **signs are in place;**
- 33 g. **The minimum designated time period of the fire season (i.e., May 1 through**
34 **October 15) and the criteria to modify the designated fire season to respond**
35 **to changing conditions;**
- 36 h. **The number, size, and location of onsite water receptacles to be staged**
37 **around the facility site for firefighting purposes during the fire season; and**
- 38 i. **Training needs (both for facility personnel and for first responders).**
- 39 j. **Copies of mutual aid, fire protection association, or other agreements entered**
40 **into concerning fire protection at the facility site.**

41
42 (V.C.4) During construction of the facility, the certificate holder shall ensure that
43 construction vehicles and equipment are operated on graveled areas to the extent
44 possible and that open flames, such as cutting torches, are kept away from grassy
45 areas.
46

- 1 (V.C.5) During construction and operation of the facility, the certificate holder shall
2 ensure that the O&M facility and all service vehicles are equipped with shovels
3 and portable fire extinguishers of a 4A50BC or equivalent rating.
4
- 5 (V.C.6) During construction of the facility, the certificate holder shall maintain a water
6 truck on site to respond to potential fire incidents.
7
- 8 (V.C.7) The certificate holder shall construct turbines on concrete pads with a minimum
9 of 10 feet of nonflammable and non-erosive ground cover on all sides. The
10 certificate holder shall cover turbine pad areas with nonflammable, non-erosive
11 material immediately following exposure during construction and shall maintain
12 the pad area covering during operation of the facility.
13
- 14 (V.C.8) During operation of the facility, the certificate holder shall ensure that all on-site
15 employees receive annual fire prevention and response training, including tower
16 rescue training, from qualified instructors or members of local fire districts and
17 shall ensure that all employees are instructed to keep vehicles on roads and off dry
18 grassland, except when off-road operation is required for emergency purposes.
19
- 20 (V.C.9) Upon beginning operation of the facility, the certificate holder shall provide to
21 North Sherman Fire Protection District and Moro Rural Fire Protection District a
22 site plan indicating the identification number assigned to each turbine and the
23 location of all facility structures. During operation of the facility, the certificate
24 holder shall ensure that appropriate district personnel have an up-to-date list of the
25 names and telephone numbers of facility personnel available to respond on a 24-
26 hour basis in case of an emergency on the facility site.
27
- 28 (V.C.10) Before and during beginning construction of the facility, the certificate holder
29 shall develop and implement a construction-phase traffic management plan with
30 all affected local jurisdictions.
31
- 32 (V.C.11) During construction of the facility, the certificate holder shall implement
33 measures to reduce traffic impacts, including:
34 (a) Providing notice to all affected local jurisdictions in advance of deliveries;
35 (b) Providing notice to adjacent landowners and residents of Biggs Junction in
36 advance of deliveries; and
37 (c) Requiring flaggers to be at appropriate locations at appropriate times
38 during construction to direct traffic and reduce accident risks.
39
- 40 (V.C.12) Prior to start of construction, the certificate holder shall obtain from the Sherman
41 County Road Department an assessment of road conditions in the facility area
42 prior to the start of construction of the facility. The certificate holder shall also
43 obtain from the county road department an evaluation of the roads following
44 completion of the facility to determine any significant change in condition. The
45 certificate shall cooperate with the Sherman County Road Department to ensure
46 that any unusual damage or wear caused by the use of the county's roads by the

1 developer during the construction of the facility will be the responsibility of the
2 developer. In addition, no equipment or machinery of the developers shall be
3 parked or stored on any county road except while in use.
4

- 5 (V.C.13) Prior to beginning construction, the certificate holder will
- 6 (a) Designate a route or routes for the transport of wind turbine construction
7 material (including water, aggregate, concrete, machinery and tower
8 pieces), with the intention of minimizing damage to non-designated roads,
9 and provide these designations to the County Road Master;
 - 10 (b) Provide to the County Road Master a written summary of possible
11 anticipated road damage to the designated route or routes, and an estimate
12 of the cost of repair to the designated route or routes;
 - 13 (c) Establish and maintain an escrow account for so long as construction is
14 ongoing funded in an amount equal to the estimated cost to repair the
15 designated route or routes consistent with the estimate provided in (b); and
 - 16 (d) Conduct an inspection of the roads along the designated route or routes
17 before and after construction with a representative of the Sherman County
18 Road Department and an independent third party with the required
19 expertise to inspect and evaluate paved and graveled roads. In the event a
20 dispute arises, the third party shall be the final arbiter. The cost of the
21 hiring of the third party shall be borne by the certificate holder.
22

- 23 (V.C.14) The certificate holder shall work with Sherman County Emergency Manager to
24 assign a 9-1-1 5-digit rural address to every tower road that intersects a State or
25 county road. The county will provide and install the signage for these addresses.
26

27 **D. WASTE MINIMIZATION STANDARD**

- 28
- 29 (V.D.1) During construction, the certificate holder shall implement a waste management
30 plan that includes, but is not limited to, the following measures:
- 31 (a) Recycling steel and other metal scrap;
 - 32 (b) Recycling wood waste;
 - 33 (c) Recycling packaging wastes, such as paper and cardboard;
 - 34 (d) Collecting non-recyclable waste for transport to a landfill; and
 - 35 (e) Segregating all hazardous wastes, such as used oil, oily rags and oil-
36 absorbent materials, lubricant and cleaning solution containers, mercury-
37 containing lights, and lead-acid and nickel-cadmium batteries, for disposal
38 by a licensed firm specializing in the proper recycling or disposal of
39 hazardous wastes.
40
- 41 (V.D.2) During operation, the certificate holder shall implement a waste management plan
42 that includes, but is not limited to, the following measures:
- 43 (a) Training employees to minimize and recycle solid waste;
 - 44 (b) Recycling paper products, metals, glass and plastics;
 - 45 (c) Recycling used oil and hydraulic fluid;
 - 46 (d) Collecting non-recyclable waste for transport to a landfill; and

1 (e) Segregating all hazardous wastes, such as used oil, oily rags and
2 oil-absorbent materials, oil and cleaning solution containers,
3 mercury-containing lights, and lead-acid and nickel-cadmium
4 batteries, for disposal by a licensed firm specializing in the proper
5 recycling or disposal of hazardous wastes.
6

7 (V.D.3) During construction, the certificate holder shall provide portable toilets for on-site
8 sewage handling and shall ensure that they are pumped and cleaned regularly by a
9 licensed contractor.
10

11 (V.D.4) During operation, the certificate holder shall discharge sanitary wastewater
12 generated at the O&M facility to a licensed on-site septic system in compliance
13 with county permit requirements. The certificate holder shall design the septic
14 system with a discharge capacity of less than 5,000 gallons per day.
15

16 VI. OTHER APPLICABLE REGULATORY REQUIREMENTS

17 A. REQUIREMENTS UNDER COUNCIL JURISDICTION

18 1. NOISE CONTROL REGULATIONS

19
20
21
22 (VI.A.1.1) To reduce noise impacts at nearby residential areas, the certificate holder shall:

- 23 (a) Confine the noisiest operation of heavy construction equipment to the
24 daylight hours;
- 25 (b) Require contractors to install and maintain exhaust mufflers on all
26 combustion engine-powered equipment; and
- 27 (c) Establish a complaint response system at the construction manager's
28 office to address noise complaints.
29

30 (VI.A.1.2) The certificate holder shall submit, for Department approval prior to construction,
31 a complete new noise analysis for the facility as designed and generate a new
32 table listing each noise-sensitive property, as defined in OAR 340-035-0015(38),
33 and the predicted maximum hourly L_{50} noise level at each noise-sensitive
34 property. In addition, the certificate holder shall provide the predicted sound
35 levels contributed by each turbine at each noise-sensitive property that does not
36 provide a waiver of the ambient noise rule. The certificate holder shall perform
37 the analysis using the CADNA/A by DataKustik GmbH of Munich, Germany,
38 and shall base the analysis on the final facility design including final choice of
39 turbine and location of all facility components. The analysis shall demonstrate to
40 the satisfaction of the Department that each of the following requirements have
41 been met:

- 42 (a) For any noise-sensitive property, the certificate holder shall identify the
43 final design locations of all turbines to be built and perform a noise
44 analysis demonstrating, in accordance with OAR 340-035-
45 0035(1)(b)(B)(iii)(IV), that the total hourly L_{50} noise level generated by
46 the facility would not exceed 50 dBA at the appropriate measurement
47 point. The certificate holder shall assume the following input parameters:

- The maximum sound power level warranted by the manufacturer or confirmed by other means acceptable to the Department;
- The exact locations of the proposed turbines;
- Attenuation of sound due to absorption to be calculated using a methodology satisfactory to the Department;
- The use of 50° F temperature and 70 percent relative humidity in the analysis;
- A 2dB safety margin shall be added to turbine sound power levels;
- No credit for shielding of any residence by terrain; and
- All receptors treated as simultaneously downwind of all turbines.

(b) If the hourly L₅₀ noise levels caused by the facility at any noise-sensitive property would increase the ambient noise level at any noise-sensitive property over the full set of wind conditions ranging from cut in to full load by more than 10 dBA, the certificate holder shall obtain a legally effective easement or real covenant from that property owner pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L₁₀ and L₅₀ by more than 10 dBA at the appropriate measurement point. A legally effective easement or real covenant shall (i) include a legal description of the burdened property (the noise-sensitive property); (ii) be recorded in the real property records of the county; (iii) expressly benefit the certificate holder; (iv) expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and (v) not be subject to revocation without the certificate holder's written approval.

(c) If, for any noise-sensitive property where the hourly L₅₀ noise levels caused by the facility would increase by more than 10 dBA above the ambient level over the full range of wind conditions measured for that property and where the certificate holder has not obtained a legally effective easement or real covenant as described in (b), the certificate holder shall identify measures to reduce noise at that property either by eliminating or moving turbines, and shall perform the noise analysis again to demonstrate, in accordance with OAR 340-035-0035(1)(b)(B)(iii)(IV), that the total noise generated by the facility would meet the ambient noise degradation test at the appropriate measurement point at that noise-sensitive property. The certificate holder shall obtain Department concurrence of the new analysis prior to start of construction.

(VI.A.1.3) During operation, the certificate holder shall maintain a complaint response system to address noise complaints. The certificate holder shall promptly notify the Department of any complaints received regarding facility noise and of any actions taken by the certificate holder to address those complaints. Prior to start of commercial operation, the certificate holder shall notify, in writing, the owners of potentially affected noise-sensitive properties identified in Exhibit X of the completed Application for a Site Certificate. The notice shall inform the property owners of the procedure and contact information for filing a complaint regarding

1 the noise level from the facility once it is operating. The certificate holder shall
2 document the issuance of this notice and provide that documentation to the
3 Department.
4

- 5 (VI.A.1.4) Prior to start of commercial operation, the certificate holder shall submit a plan
6 for complaint-based operational noise monitoring to the Department. Commercial
7 operation shall not commence until the Department has concurred in writing with
8 the complaint-based noise monitoring protocol. The plan shall provide for testing
9 at houses whose owners or occupants submit a complaint to the Council or the
10 Department. The plan shall include a schedule for completion of required testing
11 and a date certain by which written results shall be provided to the Council. If the
12 owner of the property that filed the complaint refuses to grant access for the
13 purpose of performing the noise test described in this condition after reasonable
14 attempts are made by the certificate holder to receive permission for access, then
15 the Department shall not require further corrective action.
16

17 **2. REMOVAL FILL LAW**

18 [No conditions]
19

20 **3. GROUND WATER ACT**

21 [No conditions]
22

23 **4. PUBLIC HEALTH AND SAFETY**
24

- 25 (VI.A.4.1) The certificate holder shall take reasonable steps to reduce or manage human
26 exposure to electric and magnetic fields, including, but not limited to:
27 (a) Constructing all aboveground transmission lines at least 200 feet from any
28 residence or other occupied structure, measured from the centerline of the
29 transmission line;
30 (b) Fencing all areas near the facility substations to ensure that substation
31 equipment is not accessible to the public;
32 (c) Providing to landowners a map of underground and overhead transmission
33 lines on their property and advising landowners of possible health risks;
34 and
35 (d) Designing and maintaining all transmission lines so that alternating
36 current electric fields do not exceed 9 kV per meter at one meter above the
37 ground surface in areas accessible to the public.
38
- 39 (VI.A.4.2) In advance of, and during, preparation of detailed design drawings and
40 specifications for 230-kV, 500-kV and 34.5-kV transmission lines, the certificate
41 holder shall consult with the Utility Safety and Reliability Section of the Oregon
42 Public Utility Commission to ensure that the designs and specifications are
43 consistent with applicable codes and standards.
44
- 45 (VI.A.4.3) Prior to start of construction, the certificate holder shall submit to ODOE a
46 procedure for coordinating, with all affected local electric service utilities and

1 transmission service providers, crane movements under electric transmission lines
2 during construction and maintenance of the facility. The procedure shall address
3 subjects including, but not limited to, minimum advance notification prior to any
4 crane movement under an electric transmission or distribution line, protocols for
5 determining adequate line clearance and specific crane path locations. With the
6 procedure, the certificate holder shall provide evidence of concurrence by each
7 affected electric service utility or transmission service provider. The certificate
8 holder shall ensure that all employees, construction contactors and subcontractors
9 adhere to this procedure throughout construction and maintenance of the facility.

10
11
12
13 **VII. CONDITIONS REQUIRED BY COUNCIL RULES**

14 This section lists conditions required by OAR 345-027-0020 (Mandatory Conditions in
15 Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028
16 (Monitoring Conditions) and OAR Chapter 345, Division 26 (Construction and Operation Rules
17 for Facilities). These conditions should be read together with the specific facility conditions
18 listed in Sections III, IV, V and VI to ensure compliance with the siting standards of OAR
19 Chapter 345, Divisions 22 and 24, and to protect the public health and safety. In these conditions,
20 the definitions in OAR 345-001-0010 apply.

21
22 The obligation of the certificate holder to report information to the Department or the
23 Council under the conditions listed in this section and in Sections III, IV, V and VI is subject to
24 the provisions of ORS 192.502 et seq. and ORS 469.560. To the extent permitted by law, the
25 Department and the Council will not publicly disclose information that may be exempt from
26 public disclosure if the certificate holder has clearly labeled such information and stated the basis
27 for the exemption at the time of submitting the information to the Department or the Council. If
28 the Department or the Council receives a request for the disclosure of the information, the
29 Department or the Council, as appropriate, will make a reasonable attempt to notify the
30 certificate holder and will refer the matter to the Attorney General for a determination of whether
31 the exemption is applicable, pursuant to ORS 192.450.

32
33 In addition to these conditions, the certificate holder is subject to all conditions and
34 requirements contained in the rules of the Council and in local ordinances and State laws in
35 effect on the date the site certificate is executed. Under ORS 469.401(2), upon a clear showing of
36 a significant threat to the public health, safety or the environment that requires application of
37 later-adopted laws or rules, the Council may require compliance with such later-adopted laws or
38 rules.

39
40 The Council recognizes that many specific tasks related to the design, construction,
41 operation and retirement of the facility will be undertaken by the certificate holder's agents or
42 contractors. Nevertheless, the certificate holder is responsible for ensuring compliance with all
43 provisions of the site certificate.

44
45 (VII.1) OAR 345-027-0020(1): The Council shall not change the conditions of the site
46 certificate except as provided for in OAR Chapter 345, Division 27.

1
2 (VII.2) OAR 345-027-0020(2): The certificate holder shall submit a legal description of
3 the site to the Department of Energy within 90 days after beginning operation of
4 the facility. The legal description required by this rule means a description of
5 metes and bounds or a description of the site by reference to a map and
6 geographic data that clearly and specifically identifies the outer boundaries that
7 contain all parts of the facility.
8

9 (VII.3) OAR 345-027-0020(3): The certificate holder shall design, construct, operate and
10 retire the facility:

- 11 (a) Substantially as described in the site certificate;
- 12 (b) In compliance with the requirements of ORS Chapter 469, applicable
13 Council rules, and applicable state and local laws, rules and ordinances in
14 effect at the time the site certificate is issued; and
- 15 (c) In compliance with all applicable permit requirements of other state
16 agencies.
17

18 (VII.4) OAR 345-027-0020(4): The certificate holder shall begin and complete
19 construction of the facility by the dates specified in the site certificate. [*See*
20 *Conditions (III.D.1) and (III.D.2).*]
21

22 (VII.5) OAR 345-027-0020(5): Except as necessary for the initial survey or as otherwise
23 allowed for wind energy facilities, transmission lines or pipelines under this
24 section, the certificate holder shall not begin construction, as defined in OAR 345-
25 001-0010, or create a clearing on any part of the site until the certificate holder
26 has construction rights on all parts of the site. For the purpose of this rule,
27 “construction rights” means the legal right to engage in construction activities.
28 For wind energy facilities, transmission lines or pipelines, if the certificate holder
29 does not have construction rights on all parts of the site, the certificate holder may
30 nevertheless begin construction, as defined in OAR 345-001-0010, or create a
31 clearing on a part of the site if the certificate holder has construction rights on that
32 part of the site and:

- 33 (a) The certificate holder would construct and operate part of the facility on
34 that part of the site even if a change in the planned route of the
35 transmission line or pipeline occurs during the certificate holder’s
36 negotiations to acquire construction rights on another part of the site; or
- 37 (b) The certificate holder would construct and operate part of a wind energy
38 facility on that part of the site even if other parts of the facility were
39 modified by amendment of the site certificate or were not built.
40

41 (VII.6) OAR 345-027-0020(6): If the Council requires mitigation based on an affirmative
42 finding under any standards of Division 22 or Division 24 of OAR Chapter 345,
43 the certificate holder shall consult with affected state agencies and local
44 governments designated by the Council and shall develop specific mitigation
45 plans consistent with Council findings under the relevant standards. The
46 certificate holder must submit the mitigation plans to the Office and receive

Office approval before beginning construction or, as appropriate, operation of the facility.

(VII.7) OAR 345-027-0020(7): The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

(VII.8) OAR 345-027-0020(8): Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility. [*See Condition IV.C.4.*]

(VII.9) OAR 345-027-0020(9): The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council’s approval in the site certificate of an estimated amount required to restore the site.

(VII.10) OAR 345-027-0020(10): 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.

(VII.11) OAR 345-027-0020(11): Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.

(VII.12) OAR 345-027-0020(12): The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule “seismic hazard” includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and subsidence.

(VII.13) OAR 345-027-0020(13): The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the

1 foundation rocks differ significantly from those described in the application for a
2 site certificate. After the Department receives the notice, the Council may require
3 the certificate holder to consult with the Department of Geology and Mineral
4 Industries and the Building Codes Division and to propose mitigation actions.

5
6 (VII.14) OAR 345-027-0020(14): The certificate holder shall notify the Department, the
7 State Building Codes Division and the Department of Geology and Mineral
8 Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes
9 are found at or in the vicinity of the site.

10
11 (VII.15) OAR 345-027-0020(15): Before any transfer of ownership of the facility or
12 ownership of the site certificate holder, the certificate holder shall inform the
13 Department of the proposed new owners. The requirements of OAR 345-027-
14 0100 apply to any transfer of ownership that requires a transfer of the site
15 certificate.

16
17 (VII.16) OAR 345-027-0020(16): If the Council finds that the certificate holder has
18 permanently ceased construction or operation of the facility without retiring the
19 facility according to a final retirement plan approved by the Council, as described
20 in OAR 345-027-0110, the Council shall notify the certificate holder and request
21 that the certificate holder submit a proposed final retirement plan to the Office
22 within a reasonable time not to exceed 90 days. If the certificate holder does not
23 submit a proposed final retirement plan by the specified date, the Council may
24 direct the Department to prepare a proposed a final retirement plan for the
25 Council's approval. Upon the Council's approval of the final retirement plan, the
26 Council may draw on the bond or letter of credit described in OAR 345-027-
27 0020(8) to restore the site to a useful, non-hazardous condition according to the
28 final retirement plan, in addition to any penalties the Council may impose under
29 OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is
30 insufficient to pay the actual cost of retirement, the certificate holder shall pay any
31 additional cost necessary to restore the site to a useful, non-hazardous condition.
32 After completion of site restoration, the Council shall issue an order to terminate
33 the site certificate if the Council finds that the facility has been retired according
34 to the approved final retirement plan.

35
36 (VII.17) OAR 345-027-0023(4): If the facility includes any transmission line under
37 Council jurisdiction:
38 (a) The certificate holder shall design, construct and operate the transmission
39 line in accordance with the requirements of the National Electrical Safety
40 Code 2007 edition; and
41 (b) The certificate holder shall develop and implement a program that
42 provides reasonable assurance that all fences, gates, cattle guards, trailers,
43 or other objects or structures of a permanent nature that could become
44 inadvertently charged with electricity are grounded or bonded throughout
45 the life of the line.
46

1 (VII.18) OAR 345-027-0023(5): If the proposed energy facility is a pipeline or a
2 transmission line or has, as a related or supporting facility, a pipeline or
3 transmission line, the Council shall specify an approved corridor in the site
4 certificate and shall allow the certificate holder to construct the pipeline or
5 transmission line anywhere within the corridor, subject to the conditions of the
6 site certificate. If the applicant has analyzed more than one corridor in its
7 application for a site certificate, the Council may, subject to the Council's
8 standards, approve more than one corridor.
9

10 (VII.19) OAR 345-027-0028: The following general monitoring conditions apply:

- 11 (a) The certificate holder shall consult with affected state agencies, local
12 governments and tribes and shall develop specific monitoring programs
13 for impacts to resources protected by the standards of divisions 22 and 24
14 of OAR Chapter 345 and resources addressed by applicable statutes,
15 administrative rules and local ordinances. The certificate holder must
16 submit the monitoring programs to the Department of Energy and receive
17 Department approval before beginning construction or, as appropriate,
18 operation of the facility.
- 19 (b) The certificate holder shall implement the approved monitoring programs
20 described in OAR 345-027-0028(1) and monitoring programs required by
21 permitting agencies and local governments.
- 22 (c) For each monitoring program described in OAR 345-027-0028(1) and (2),
23 the certificate holder shall have quality assurance measures approved by
24 the Department before beginning construction or, as appropriate, before
25 beginning commercial operation.
- 26 (d) If the certificate holder becomes aware of a significant environmental
27 change or impact attributable to the facility, the certificate holder shall, as
28 soon as possible, submit a written report to the Department describing the
29 impact on the facility and any affected site certificate conditions.
30

31 (VII.20) OAR 345-026-0048: Following receipt of the site certificate or an amended site
32 certificate, the certificate holder shall implement a plan that verifies compliance
33 with all site certificate terms and conditions and applicable statutes and rules. As a
34 part of the compliance plan, to verify compliance with the requirement to begin
35 construction by the date specified in the site certificate, the certificate holder shall
36 report promptly to the Department of Energy when construction begins.
37 Construction is defined in OAR 345-001-0010. In reporting the beginning of
38 construction, the certificate holder shall describe all work on the site performed
39 before beginning construction, including work performed before the Council
40 issued the site certificate, and shall state the cost of that work. For the purpose of
41 this exhibit, "work on the site" means any work within a site or corridor, other
42 than surveying, exploration or other activities to define or characterize the site or
43 corridor. The certificate holder shall document the compliance plan and maintain
44 it for inspection by the Department or the Council.

1
2 (VII.21) OAR 345-026-0080: The certificate holder shall report according to the following
3 requirements:

4 (a) General reporting obligation for energy facilities under construction or
5 operating:

6 (i) Within six months after beginning construction, and every six
7 months thereafter during construction of the energy facility and
8 related or supporting facilities, the certificate holder shall submit a
9 semiannual construction progress report to the Department of
10 Energy. In each construction progress report, the certificate holder
11 shall describe any significant changes to major milestones for
12 construction. The certificate holder shall include such information
13 related to construction as specified in the site certificate. When the
14 reporting date coincides, the certificate holder may include the
15 construction progress report within the annual report described in
16 OAR 345-026-0080.

17 (ii) By April 30 of each year after beginning construction, the
18 certificate holder shall submit an annual report to the Department
19 addressing the subjects listed in OAR 345-026-0080. The Council
20 Secretary and the certificate holder may, by mutual agreement,
21 change the reporting date.

22 (iii) To the extent that information required by OAR 345-026-0080 is
23 contained in reports the certificate holder submits to other state,
24 federal or local agencies, the certificate holder may submit
25 excerpts from such other reports to satisfy this rule. The Council
26 reserves the right to request full copies of such excerpted reports.

27 (b) In the annual report, the certificate holder shall include the following
28 information for the calendar year preceding the date of the report:

29 (i) Facility Status: An overview of site conditions, the status of
30 facilities under construction, and a summary of the operating
31 experience of facilities that are in operation. In this section of the
32 annual report, the certificate holder shall describe any unusual
33 events, such as earthquakes, extraordinary windstorms, major
34 accidents or the like that occurred during the year and that had a
35 significant adverse impact on the facility.

36 (ii) Reliability and Efficiency of Power Production: For electric power
37 plants, the plant availability and capacity factors for the reporting
38 year. The certificate holder shall describe any equipment failures
39 or plant breakdowns that had a significant impact on those factors
40 and shall describe any actions taken to prevent the recurrence of
41 such problems.

42 (iii) Fuel Use: For thermal power plants:

43 (A) The efficiency with which the power plant converts fuel
44 into electric energy. If the fuel chargeable to power heat
45 rate was evaluated when the facility was sited, the

1 certificate holder shall calculate efficiency using the same
2 formula and assumptions, but using actual data; and

3 (B) The facility's annual hours of operation by fuel type and,
4 every five years after beginning operation, a summary of
5 the annual hours of operation by fuel type as described in
6 OAR 345-024-0590(5).

7 (iv) Status of Surety Information: Documentation demonstrating that
8 bonds or letters of credit as described in the site certificate are in
9 full force and effect and will remain in full force and effect for the
10 term of the next reporting period.

11 (v) Monitoring Report: A list and description of all significant
12 monitoring and mitigation activities performed during the previous
13 year in accordance with site certificate terms and conditions, a
14 summary of the results of those activities, and a discussion of any
15 significant changes to any monitoring or mitigation program,
16 including the reason for any such changes.

17 (vi) Compliance Report: A description of all instances of
18 noncompliance with a site certificate condition. For ease of review,
19 the certificate holder shall, in this section of the report, use
20 numbered subparagraphs corresponding to the applicable sections
21 of the site certificate.

22 (vii) Facility Modification Report: A summary of changes to the facility
23 that the certificate holder has determined do not require a site
24 certificate amendment in accordance with OAR 345-027-0050.

25 (viii) Nongenerating Facility Carbon Dioxide Emissions: For
26 nongenerating facilities that emit carbon dioxide, a report of the
27 annual fuel use by fuel type and annual hours of operation of the
28 carbon dioxide emitting equipment as described in OAR 345-024-
29 0630(4).

30
31 (VII.22) OAR 345-026-0105: The certificate holder and the Department of Energy shall
32 exchange copies of all correspondence or summaries of correspondence related to
33 compliance with statutes, rules and local ordinances on which the Council
34 determined compliance, except for material withheld from public disclosure under
35 state or federal law or under Council rules. The certificate holder may submit
36 abstracts of reports in place of full reports; however, the certificate holder shall
37 provide full copies of abstracted reports and any summarized correspondence at
38 the request of the Department.

39
40 (VII.23) OAR 345-026-0170(1): The certificate holder shall notify the Department of
41 Energy within 72 hours of any occurrence involving the facility if:

- 42 (a) There is an attempt by anyone to interfere with its safe operation;
43 (b) A natural event such as an earthquake, flood, tsunami or tornado, or a
44 human-caused event such as a fire or explosion affects or threatens to
45 affect the public health and safety or the environment; or
46 (c) There is any fatal injury at the facility.

1
2
3 **VIII. SUCCESSORS AND ASSIGNS**
4

5 To transfer this site certificate or any portion thereof or to assign or dispose of it in any
6 other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0100.
7

8
9 **IX. SEVERABILITY AND CONSTRUCTION**
10

11 If any provision of this agreement and certificate is declared by a court to be illegal or in
12 conflict with any law, the validity of the remaining terms and conditions shall not be affected,
13 and the rights and obligations of the parties shall be construed and enforced as if the agreement
14 and certificate did not contain the particular provision held to be invalid.
15

16
17 **X. GOVERNING LAW AND FORUM**
18

19 This site certificate shall be governed by the laws of the State of Oregon. Any litigation
20 or arbitration arising out of this agreement shall be conducted in an appropriate forum in Oregon.
21

22
23 **XI. EXECUTION**
24

25 This site certificate may be executed in counterparts and will become effective upon
26 signature by the Chair of the Council and the authorized representative of the certificate holder.
27

28 **IN WITNESS WHEREOF**, this site certificate has been executed by the State of Oregon, acting
29 by and through its Energy Facility Siting Council, and by Golden Hills Wind Farm LLC.
30

31 ENERGY FACILITY SITING COUNCIL

GOLDEN HILLS WIND FARM LLC

32
33
34 By: _____
35 W. Bryan Wolfe, Chair
36 Oregon Energy Facility Siting Council

By: _____

Print: _____

37
38
39 Date: _____

Date: _____



ENVIRONMENTAL & STATISTICAL CONSULTANTS

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MEMORANDUM

Date: September 11, 2014
To: Golden Hills Wind Farm LLC
From: WEST, Inc.
Subject: Proposed raptor nest survey protocol for Golden Hills Wind Project

Introduction

Golden Hills Wind Farm LLC (Golden Hills) is in the process of requesting an extension of the site certificate for the Golden Hills Wind Project (GHWP) in Sherman County, OR. During review of the application to extend the site certificate, it was recommended by Oregon Department of Fish and Wildlife (ODFW) that additional raptor nest surveys be conducted prior to the start of construction utilizing currently recommended survey protocols to update the data gathered during previous surveys. Raptor nest surveys for the GHWP were last conducted in 2007 and covered the project area boundary and a 2-mile buffer, with an extended survey area to the east of the project along Grass Valley Canyon and the John Day River, which specifically targeted cliff nesting species such as golden eagles and peregrine falcons. This memo was prepared to summarize the proposed survey protocol that Golden Hills intends to implement at the GHWP to satisfy the recommendation of ODFW.

Proposed Raptor Nest Survey Methods

The objective of the raptor nest survey will be to locate nests of raptors that may be subject to disturbance and displacement effects from construction and operation of the GHWP. The initial raptor nest survey will be conducted prior to leaf out to enhance the ability of observers to located nests in deciduous trees and will be timed with the early courtship period for golden eagles. This means the initial survey will likely occur late January or early February. To better document nest occupancy at all nests located during the initial survey, a follow-up survey will be conducted later in the nesting season (~April) when most species should be actively incubating eggs or brooding young.

Nest surveys will be conducted from a helicopter flown at an altitude of tree-top level to approximately 250 ft (76 m) aboveground. Surveys will target all potential raptor nesting substrates, with an emphasis on tree and cliff nesting raptors, such as red-tailed hawk (*Buteo jamaicensis*), Swainson's hawk (*Buteo swainsoni*), great-horned owl (*Bubo virginianus*), golden



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eagle (*Aquila chrysaetos*) and peregrine falcon (*Falcon peregrinus*). Other species that nest on the ground, or in cavities, will be recorded if observed, but will not be the focus of surveys as they are difficult to detect from the air. Systematic surveys for all raptor nests will be conducted within 2-miles of proposed turbine corridors, with additional surveys targeting golden eagle nests conducted out to a maximum of 10 miles from proposed turbine corridors. Per the USFWS Eagle Conservation Plan Guidance (ECP Guidance; USFWS 2013), if recent data (i.e., with the past 5 years) are available on spacing of occupied eagle nests for the project-area nesting population, the data may be used to delineate an appropriate survey area boundary, as described in Appendix H of the ECP Guidance. If recent survey data suggest a final survey area buffer that is less than 10 miles, it will be brought to the attention of the USFWS/ODFE prior to implementation.

The Oregon Eagle Foundation (OEF) has been conducting surveys for eagle nests and monitoring known golden eagle nests throughout Oregon for several years (Isaacs 2013). Prior to implementing surveys, OEF will be contacted regarding the location of known nesting sites and recent monitoring efforts in the vicinity of the GHWP. Coordination with OEF, and potentially others (e.g., ODFW, other developers), will be used to minimize survey overlap/duplication and reduce potential disturbance from survey efforts at known nest sites. To the extent practicable, surveys will follow the methods described in the USFWS Eagle Conservation Plan Guidance document (USFWS 2013). The initial survey will include a detailed search of all potentially suitable nesting substrates, while the second survey will only target nests identified during the initial survey. New nests identified while traveling between known sites will also be documented during the second survey.

When a nest is observed, the helicopter will be moved to a position where nest status and species present can be determined. Efforts will be made to minimize disturbance to breeding raptors; generally, the greatest possible distance at which the species can be identified will be maintained, with distances varying depending upon nest location and wind conditions. Data recorded for each nest location will include species occupying the nest, nest status (inactive, eggs present, incubating, young present, adult present, unknown, or other), nest substrate (tree, shrub, rocky outcrop, cliff, or power line), number of eggs or young present, time and date of observation, and the nest location (recorded with handheld GPS units). Locations of inactive nests will be recorded and mapped as they may be occupied during subsequent years.

References

- Isaacs, F.B. 2013. Golden eagles (*Aquila chrysaetos*) nesting in Oregon 2011-2013: Draft Annual Report, 31 December 2013. Oregon Eagle Foundation, Inc., Klamath Falls, Oregon. USA.
- US Fish and Wildlife Service (USFWS). 2013. Eagle Conservation Plan Guidance. Module 1 - Land-Based Wind Energy. Version 2. Division of Migratory Bird Management, USFWS. April 2013. Available online at: [http://www.fws.gov/migratorybirds/Eagle Conservation Plan Guidance-Module%201.pdf](http://www.fws.gov/migratorybirds/Eagle%20Conservation%20Plan%20Guidance-Module%201.pdf)