

**Attachment 1: NHW Draft Proposed Order Comments (Index)**

<b>Commenter Name</b>	<b>Title/Entity/Organization</b>	<b>Date Received</b>	<b>Comment Format (Written/Oral)</b>	<b>Comment Scope/Topic</b>
Samuel J. Ramos	Public; Property owner	4/27/2022	Written	Does not support the project, because as represented in the site boundary map, would cross two tax lots, his and the Margaret West/West Family Trust. Indicates comments provide sufficient specificity for the Contested Case proceeding.
Matt Martin, and Tim McMahan	Applicant	5/24/2022	Written	Requests clarification on Statewide Land Use Planning Goal 3 (and Goal 3 exception); and Decommissioning Contingencies.
	Applicant; Capital Power	5/25/2022	Written (PowerPoint presentation)	Company information to be presented by Matt Martin at start of hearing.
Zack Culver	Public; Business Manager, Laborer’s International Union of North America (LIUNA) Local 737	5/25/2022	Written	Supports the project
Robert Waldher	Reviewing Agency; Director, Umatilla County Department of Land Use Planning	5/26/2022	Written	Interpretation of Land Use and 2-Mile Setback, and local land use permits.
Matt Martin	Applicant; Director, Business Development at Capital Power	5/26/2022	Oral	Project overview, and clarification of Decommissioning Contingencies
Tim McMahan	Applicant; Stoel Rives LLP	5/26/2022	Oral	Goal 3 exception
Kent Howe	EFSC; Vice Chair	5/26/2022	Oral	Goal 3 exception
Hanley Jenkins III	EFSC; Council Member	5/26/2022	Oral	Goal 3 exception
Cindy Condon	EFSC; Council Member	5/26/2022	Oral	Applicant/Parent company relation, and Organizational Expertise standard
Dixie Echeverria,	Public; ELH LLC	5/26/2022	Written/Oral	Supports the project, but that adjusting the transmission line location would negatively impact the

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				farming operation she is affiliated with.
Steve Corey	Public; Property owner (on behalf of applicant)	5/26/2022	Written/Oral	Supports the project, discusses Goal 3 exception criteria.
Chuck Little	Public	5/26/2022	Oral	Supports the project
James Peters	Public; LIUNA	5/26/2022	Written/Oral	Supports the project
Jodi Parker	Public; LIUNA	5/26/2022	Written/Oral	Supports the project
Jontae Clardy	Public; LIUNA	5/26/2022	Written/Oral	Supports the project
Scott West	Public; Elron/Ramos Ranches	5/26/2022	Oral	References letter from Ramos and states that they are in discussions with applicant – not resolved.
Art Prior	Public	5/26/2022	Oral	Supports for the project is contingent upon not modifying/deviating from the proposed transmission line route.
Jeff Grant	Public; LIUNA	5/26/2022	Written	Supports the project, and the work opportunities (including careers and health & retirement benefits) it would provide.
Eric Ansen	Public	5/26/2022	Written	Supports the project

**Copies of all written comments and comment cards received are attached in order of index table**

April 22, 2022

Kathleen Sloan, Senior Siting Analyst  
Oregon Department of Energy  
550 Capital Street NE  
Salem, Oregon 97301

RE: Nolin Hills Wind Energy Facility  
Exhibit C – Property Location and Maps

Dear Ms. Sloan:

This is to inform you of an objection to the proposed location of a portion of the Nolin Hills Wind Energy facility as it is shown on the facility and site boundary map. The hard copy and online version shows some of the facility sited on property owned by Samuel J Ramos, tax lot 11100 and Margaret West/West Family Trust tax lot 8500, Umatilla County, Oregon.

The owners of these properties denied easement when they were approached about the project over two years ago. There have been no easement discussions since that time and there is currently no interest in allowing that access.

If this is merely a mapping error your apology is accepted and we will expect to be contacted immediately regarding this issue. If this is your intended location and it has become part of your proposal without landowner knowledge or agreement then please consider this as our written issue notice for the Contested Case proceeding as required during the period of April 19, 2022 and May 26, 2022. This comment, along with the fact there has been no contractual access easement effected supports this objection with sufficient specificity.

Please note this is not an objection to the project, just an objection to where you have indicated location/siting of a portion of the project. Thank you for recognizing this issue has been raised and submitting this letter for comment. Your response would be appreciated.

Sincerely,



Samuel J. Ramos  
13429 Hereford Loop, Hereford, Oregon 97837  
541-446-3302 email [ramos@ortelco.net](mailto:ramos@ortelco.net)

May 24, 2022

Kathleen Sloan  
Oregon Department of Energy  
550 Capital Street NE  
Salem Oregon, 97310

**Re: Comments on the Draft Proposed Order, Nolin Hills Wind Power Project**

Dear Ms. Sloan,

Regarding your on-going consideration of the Application for a Site Certificate for the Nolin Hills Wind Power Project (Nolin Hills), we wish to provide you comments on the Draft Proposed Order (DPO) Nolin Hills as issued on April 19, 2022.

Clarification on certain facts (ex. RAI submission dates, certain distances, etc.) will be provided separately in a Word version of the DPO. In addition to these corrections, we urge the Department to consider the following items:

**Balancing determination**

We note that the Department recommends not granting our requested balancing determination. While we are disappointed in this recommendation by the Oregon Department of Energy (ODOE), in order to allow the Council to focus on issues that have a greater anticipated impact on facility constructability, **we have decided not to press the issue further at this time.**

We continue to stand by our reasoning that a balancing determination is warranted for the reasons described in the ASC. We may follow-up with additional arguments at a later date depending on the final design layout and pre-construction habitat assessment, but we understand that a Site Certificate Amendment likely would be necessary if that were to occur.

**Statewide Land Use Planning Goal 3**

Attached to this submittal is a letter from our regulatory attorney, Tim McMahan of Stoel Rives LLP, dated May 20, 2022, which provides detailed comments on our rationale for a Goal 3 exception for the solar portion of the project. We describe our position in Exhibit K, page 77-98. The following points summarize and reiterate points from Mr. McMahan's letter:

- Nolin Hills will address a vital policy objective of the state in terms of mitigating climate change.

- We have worked closely with the project landowners to address their agricultural interests. In a recent letter to the Department the landowners state that the project “will enable us to support and improve our farming and ranching operations in the surrounding area by providing valuable lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments.” Landowners Bob Levy and Steven Corey will provide testimony at the upcoming public hearing.
- We are concerned that the DPO recommends a more rigorous and subjective standard for EFSC’s approval of Goal 3 “Reasons” exceptions. With the recent Obsidian Order, the Hearings Officer’s order was consistent with other orders and Council decisions in an analysis that collectively evaluated all supporting factors as a whole, finding support for the exception.
- The Department has indicated in the Nolin Hills DPO that “reasons” “are evaluated in combination, but are first evaluated individually.” (DPO, p. 111).
- Our reading of the DPO suggests that the reasons are evaluated individually and generally not in combination, with the Department rejecting evidence that was accepted in the Obsidian case. This includes minimal direct impacts to agriculture, minimal impacts on surrounding lands, the fact that this facility does not impact irrigation water availability, locational suitability and dependency of the solar facility, and our efforts to design the Project to minimize and avoid environmental impacts.

**Decommissioning Contingencies (DPO Table 6; pgs. 168-169)**

We are concerned with the manner in which additional management costs and contingencies have been applied to the retirement cost estimate by the Department, as well as with the exclusion of scrap metal value from the estimate. We understand that Council has indicated that rulemaking should be undertaken to address certain components of the retirement cost estimate process, potentially including scrap value, and will avoid repeating our extensive arguments on the scrap metal issue at this time in favor of later discussion.

However, we do not believe that the application of project management costs and future development contingencies here is consistent or logical, particularly since our decommissioning estimate already includes these items. The Department’s arbitrary application of additional management fees and contingencies adds \$6.7 million to the total estimated retirement cost without justification, which substantially and unnecessarily results in hundreds of thousands of dollars of additional cost to the project over time with no added value to the public. Specific examples of these costs are as follows:

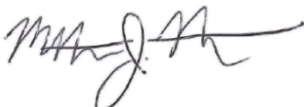
- We included an estimate of two full-time equivalents (FTEs) for a period of 16 months, for ODOE to handle contracting and oversee the work of a construction contractor in decommissioning the facility, in the event that the Project owner is unable to do so. The Department has replaced this estimate (\$533,000) with a flat 10% of the total estimated cost, or \$3,298,133. No justification for this significant change has been made. We request that the Department provide a rationale based on standard and accepted cost estimating practices for this significant increase in the estimated cost of retirement. If the Department is unable to arrive at an FTE based estimate of costs, a reasonable management percentage founded on industry accepted cost estimating principles should

be applied to the estimated *construction* cost (\$25.3M), not to the estimated total cost including project management, fees, and contingencies.

- The Department has also added a “Future Development Contingency” of 10 percent for the wind and solar components of the project, and 20 percent for the BESS. This contingency is added on top of all other costs, including project management, fees, and the contingency estimated by our professional cost estimator. No rationale or justification is provided for this 10 (or 20) percent contingency, and no rationale for applying it to the sum of our estimate is provided. We believe that the following factors should be considered in order to arrive at a more reasonable estimate:
  - If the Department does not agree with the contingency estimate of 3 percent, it should justify an alternate amount to replace this estimate but should not add its new contingency on top of our estimate. Any future cost contingency estimate should be based on standard cost estimating practices and should be applied to the total decommissioning construction cost estimate of \$25,387,983.
  - The additional contingency estimate of 20 percent for BESS components does not have a rationale provided. We request that the Department justify this higher contingency using standard cost estimating best practices.
  - We also note that the Council has standard mechanisms in place to account for annual adjustments to the decommissioning cost estimate based on factors such as inflation and changes in the labor market or cost of equipment. Therefore, the contingency added to the construction cost estimate does not need to attempt to capture these factors.

I want to thank you for your attention and consideration of the Nolin Hills Wind Energy Project, which we look forward to discussing with you at the public hearing on May 26, 2022 in Pendleton.

Sincerely,



Matt Martin  
Director, Business Development  
Capital Power  
Nolin Hills Wind LLC

CC: Sarah Esterson, ODOE  
Tim McMahan, Stoel Rives LLP  
Linnea Fossum, Tetra Tech  
Jon Sohn, Capital Power



760 SW Ninth Ave., Suite 3000  
Portland, OR 97205  
T. 503.224.3380  
F. 503.220.2480  
www.stoel.com

TIMOTHY L. MCMAHAN  
D. 503.294.9517  
tim.mcmahan@stoel.com

May 20, 2022

Ms. Marci Grail, Council Chair  
Council Members, EFSC

Mr. Todd Cornett, Siting Manager  
Oregon Department of Energy  
550 Capital Street NE  
Salem Oregon, 97310

RE: Nolin Hills Wind Power Project; Statewide Land Use Planning Goal 3

Dear Chair Grail and Council Members:

Thank you for the opportunity to provide additional information to the Council regarding the efforts the Nolin Hills Wind Power Project (Nolin Hills) has made to comply with Statewide Land Use Planning Goal 3 (Goal 3). As you are aware, a Goal 3 exception is not necessary for the wind energy generation portion of the Project. OAR 660-033-0130(37). A Goal 3 "reasons" exception is needed for the solar generation portion of the Project.

Nolin Hills has designed this facility to meet compelling needs to mitigate climate change, by proposing technology that includes both wind and solar energy generation, along with a related and supporting battery energy storage facility, all aimed at a steady, reasonably "firm" clean energy resource that will best serve Oregon's long-term energy needs.

The Nolin Hills team has heard the Council expressing general concerns regarding the sufficiency of Goal 3 analyses for solar PV facilities. We have heard the Council state that applicants need to "do a better job" in justifying Goal 3 exceptions. Nolin Hills accepts the Council's concerns, and we have worked closely with ODOE and the Project landowners to fully describe how this Project meets the requirements for a Goal 3 exception.

We strongly believe that this Project is unique in enabling a valuable "hybrid" clean energy project while also demonstrating a commitment to enhanced long term investment in local jobs and increased agricultural production stemming directly from the implementation of the Facility. Nolin Hills has partnered with a multi-generational Oregon landowner that is committed to sustainable agriculture and to the perpetuation of and investment in the local agricultural economy. We ask the Council to carefully read the Applicant's Goal 3 analysis, ASC Ex. K, 77 – 98, and the supporting letters from the landowners, Attachments K-1.

Mr. Steven H. Corey's letter (Attachment K-1) confirms that the project "will enable us to support and improve our farming and ranching operations in the surrounding area by providing valuable

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lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments.” The landowner is committed to specific efforts to “strengthen the diversity base of our legacy farm.” There will be “no loss of employees,” and to the contrary, the landowner expects to add agricultural jobs to its payroll “based on the lease payments.” See DPO, pp. 113 – 114; 129 – 130. The significant local economic benefits of the Project are documented in Ex. K, pp. 83 – 92, and summarized in the DPO, pp. 115 – 116.

The record reflects the Applicant’s commitment to work with the landowners and the County to ensure that the Project satisfies Goal 3 exception criteria, both through evidence of enhancements to local agriculture and the Project’s commitment to further, substantial investment in the local economy. We are concerned, however, that the DPO establishes a new method of evaluating a Goal 3 Reasons Exception where reasons for Goal 3 exceptions are evaluated individually versus in combination with one another. This is inconsistent with past Goal 3 exception approvals and the “substantial evidence” standard applied by the Oregon Supreme Court in prior EFSC Goal 3 appeals. (See Footnote No. 1 below).

We have reviewed the recent Obsidian Solar order, OAH Case No. 2020-ABC-03504, pp. 93 – 96. (Except attached hereto). The Obsidian order reflects an analysis of all factors supporting a Goal 3 Reasons Exception, including the accompanying ESEE analysis. The Hearings Officer’s order was based on substantial evidence and is consistent with other orders and Council decisions. The Obsidian analysis collectively evaluated all factors together, finding support for the exception.<sup>1</sup> The Obsidian Order (pp. 95 – 96) lists the combination of factors that together support the Goal 3 exception. An excerpt from the Obsidian Solar order is attached with this letter.

In the Nolin Hills DPO, ODOE states that the “reasons” “are evaluated in combination, but are first evaluated individually.” (DPO, p. 111). Our reading of the DPO suggests that the reasons are evaluated individually and generally *not in combination*, with ODOE rejecting substantial evidence that was accepted in the Obsidian case. This includes minimal direct impacts to agriculture, minimal impacts on surrounding lands, the fact that this facility does not impact irrigation water availability, locational suitability and dependency of the solar facility, and the Applicant’s efforts to design the Project to minimize and avoid environmental impacts. Also listed is the promotion of renewable energy policies, the ability to fulfill mitigation responsibilities, and the infusion of significant investments and tax revenues in the local economy. Many such factors are described in detail in the Nolin Hills ASC, Ex. K, pp. 77 - 98. Past practice has accounted for the accumulation of factors and not separately weighing them individually.

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<sup>1</sup> In *Friends of Parrot Mountain vs. NW Natural*, 336 Or. 93 (2003), the Supreme Court affirmed EFSC’s Goal 3 findings, stating that the court will “review any challenged factual findings of the council for substantial evidence in the record.” 336 Or at 96. In *Save our Rural Oregon vs. Energy Facility Siting Council*, 339 Or. 353 , 373 (2005), the Court held that substantial evidence in the record supporting Goal 3 findings exists “when the record, viewed as a whole, would permit a reasonable person to make that finding.”



May 20, 2022

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While it may be ODOE's and the Council's intent to not consider these factors holistically, but instead to weigh them individually, we simply wish to emphasize that this is a change in direction that should be acknowledged. Again, the Nolin Hills project provides compelling and substantial evidence to justify the Goal 3 exception, confirmed by ODOE, based on the legal criteria affirmed by the Oregon Supreme Court. Our concern relates more to how EFSC is signaling a new standard for future applications for site certification. Further, ODOE's evaluation method suggests that applicants in the future will need to supply evidence of that each project must uniquely satisfy the Goal 3 exception requirements, for unique reasons. We believe that only considering "reasons" individually and not holistically sets a precedent that will limit the Council's ability to evaluate and approve Goal 3 exceptions in the future. And this change is inconsistent with the Supreme Court's standard of review for Goal 3 exceptions based on substantial evidence.

We fully recognize the bedrock of Oregon's land use regulatory system is to protect and enhance agricultural land uses. The Nolin Hills project will in fact enhance local agricultural practices, with a substantial landowner poised to make new and significant investments in local agriculture. But we also urge the Council to consider, in future applications, how Council policy can have unexpected consequences of undermining significant and compelling legal and policy directives to aggressively mitigate the devastating impacts of climate change. The Council should take care in how it measures these policies against each other.

This is a challenging balance in challenging times, and one that the Council is well positioned to undertake. We appreciate the Council's continuing commitment to implement and enhance Oregon's signature objective standards-based energy facility permitting process.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Tim McMahan', with a horizontal line extending to the right.

Timothy L. McMahan  
Stoel Rives LLP

***Excerpts from Obsidian Hearings Officer Proposed Order***

*Issue 4. Whether the ASC failed to demonstrate grounds justifying an exception to LCCP Goal 3, identifying a preference for the preservation of agricultural land, as required by the LCCP and ORS 469.504(2).*

Council Standard: Land Use Standard; OAR 345-022-0030.

Next, the limited parties assert the Department erred in finding Applicant presented sufficient reasons in the ASC to justify Council to take an exception to Statewide Planning Goal 3. For the reasons below, I disagree.

OAR 660-033-0010 identifies the purpose of division 033 as the preservation and maintenance “of lands as defined by [Statewide Planning] Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.” OAR 660-033-0020(1)(a)(A) defines “agricultural land” for the purposes of Goal 3 as, “Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon.”

As discussed above, OAR 660-033-0130(38) provides minimum standards applicable to the schedule of permitted and conditional uses approvals for solar facilities on agricultural land and provides for exceptions as follows:

(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:

(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project’s ability to operate successfully;  
or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(D) No more than 20 acres of the project will be sited on arable soils;

(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;

(F) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

Because the proposed facility would occupy more than 320 acres of non-arable lands, it does not comply OAR 660-033-0130 unless the ASC provides justification for an exception to this Goal 3 requirement. As set forth above, OAR 345-022-0030(4) permits Council to take an exception to a statewide planning goal if it finds reasons justify why the state policy embodied in the applicable goal should not apply; the significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and the proposed facility is compatible with other adjacent uses or will be

made compatible through measures designed to reduce adverse impacts. OAR 345-022-0030(4)(c)(A) – (C).

ORS 197.732 provides criteria and rules for granting exceptions to applicable planning goals and provides, in part:

(1) As used in this section:

(a) “Compatible” is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) “Exception” means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(2) A local government may adopt an exception to a goal if:

\* \* \* \* \*

(c) The following standards are met:

(A) *Reasons justify why the state policy embodied in the applicable goals should not apply;*

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Emphasis added.

The ASC proffers several of the reasons justifying removal of approximately 4,000 acres

within the proposed facility site to promote other policies of importance within the county and across the state including: (1) the proposed facility will not have significant adverse impacts on accepted farm uses within the surrounding area; (2) Applicant does not seek to permanently remove land from agricultural use; (3) large-scale solar generation promotes rural economic development by creating jobs and adding to the tax base of Lake County; (4) the availability of reliable renewable energy produced by the proposed facility will help attract, recruit, and retain energy-dependent businesses to Oregon; (5) the proposed facility will promote the renewable energy policies of Lake County and support the Lake County Resources Initiative; and (6) the land within the proposed facility site is of low value for agricultural production given the quality of the underlying soils and the lack of available water rights for irrigation, making its removal from agriculture insignificant.

According to a preponderant weight of the evidence, as addressed more fully above, the ASC, as conditioned in the Department's Proposed Order, demonstrates the proposed facility is not likely to have significant adverse environmental consequences because each can be mitigated or eliminated. The evidence also shows Applicant, more likely than not, will fulfill its mitigation obligations. Moreover, the record demonstrates that, according to agreements reached between Applicant and Lake County, Applicant will pay significant taxes during the 15-year operational life of the facility, subject to annual increases of three percent. Further, Applicant will pay an annual community service fee, based on its per megawatt/per acre production, totaling approximately \$12 million over the operational life of the proposed facility. In total, those combined revenues are likely to produce nearly \$30 million in additional revenue for Lake County. Additionally, Applicant has committed to a one-time contribution, based on production capacity, of up to \$4 million.

Additionally, the record shows that the proposed facility, as conditioned, will manage impacts to protected areas, as well as scenic and cultural resources, through existing mitigation plans. Further, the record demonstrates the significant amount of energy to be produced by the proposed facility will generate reliable, renewable energy for sale to the public and promote the state of Oregon's commitment to rural economic development. Likewise, as addressed in this order, the evidence supports a conclusion that the proposed facility is or will be compatible with other adjacent uses through implementation of the DAMP, ESCP, RNWCP, and CTMP.

Accordingly, the ALJ finds the ASC provides a preponderance of evidence to justify an exception to Goal 3, as required by LCCP and ORS 469.504(2), because Applicant has proposed reasons sufficient for Council to take such an exception. Under ORS 469.504(2) and OAR 345-022-0030(4), Council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal if it finds reasons justify why the state policy embodied in the applicable goal should not apply. For the reasons stated above, I find the Department's Proposed Order determined information contained in the ASC provided a sufficient basis for Council to take an exception to Goal 3. Because Applicant has stated reasons justifying an exception to Goal 3, OAR 660-033-0130(38)(h) is inapplicable.



# Nolin Hills Wind Power Project

May 26, 2022



# Capital Power – Background



Quality Wind



Halkirk Wind



Port Dover & Nanticoke Wind



Macho Springs Wind



K2 Wind



Beaufort Solar



Bloom Wind

- Owns approximately 6,600 megawatts of power generation.
- Operates 27 facilities in U.S. and Canada.
- Invests in renewables and natural gas, generation efficiency and innovative, low-carbon technology.
- 870 employees in Canada and the U.S.
- Named one of the World's Most Ethical Companies® by the Ethisphere Institute for the third straight year (2019-2021).
- Investment grade rated (S&P: BBB-)
- Publicly Traded (TSE: CPX)

***Powering a Sustainable Future for People and Planet***



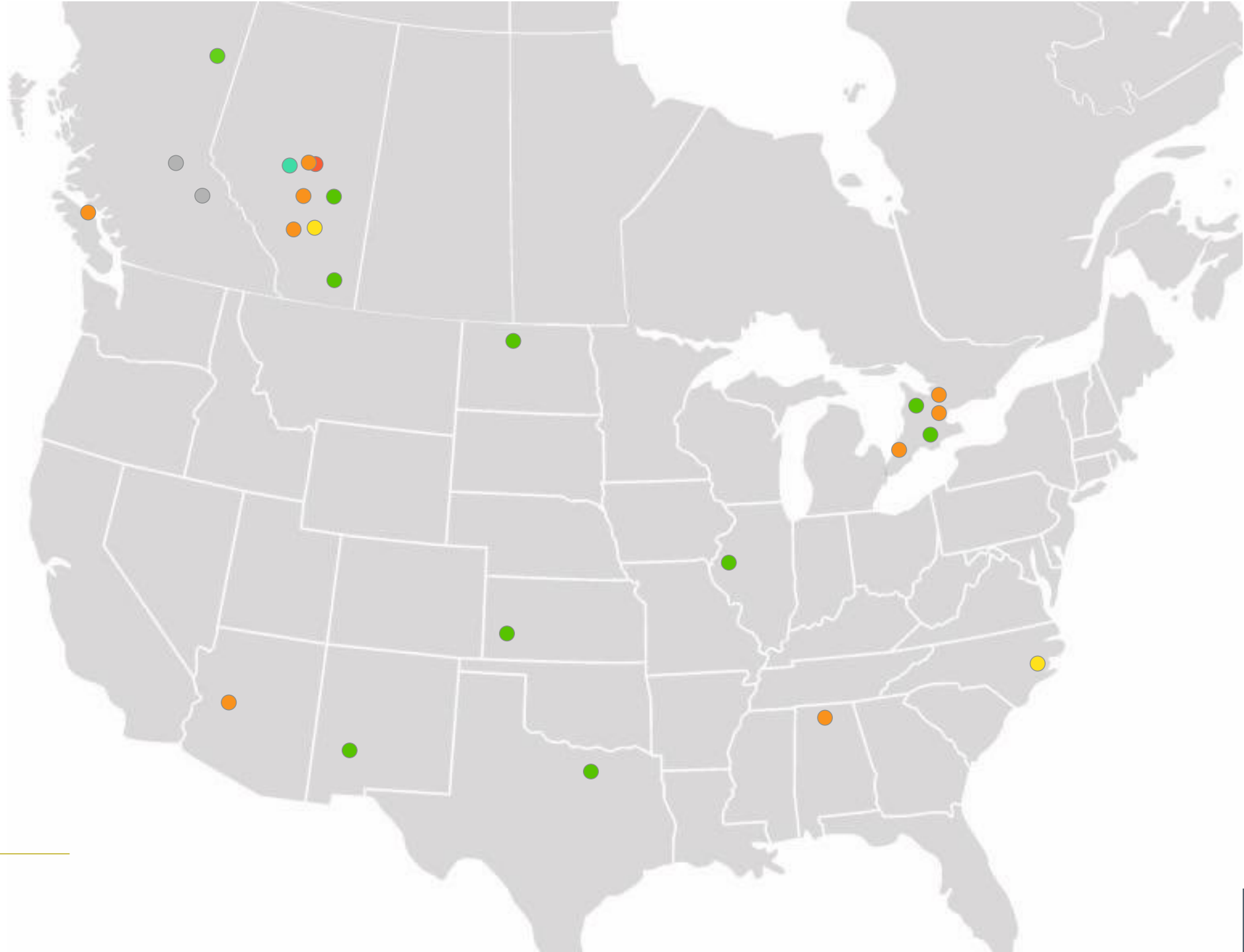
# Operational facilities

**~6,600**  
megawatts

**27\***  
facilities

## In Operation

- Wind
- Solar
- Gas
- Dual Fuel (\*Genesee 1, 2, 3 shown as one facility)
- Waste Heat
- Landfill Gas





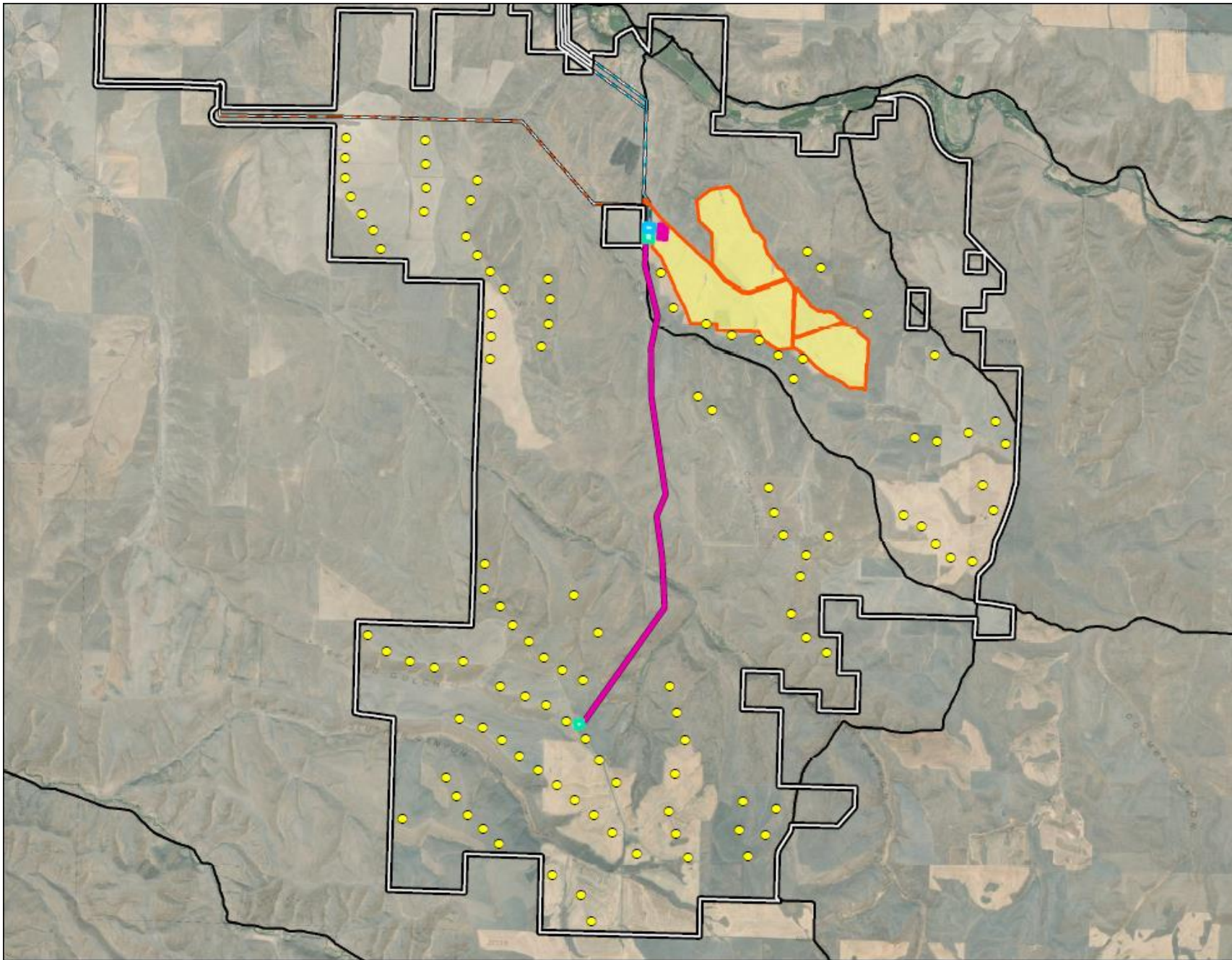
# Nolin Hills Project

- 600 megawatts (MW) total generating capacity
  - 340 MW wind energy
  - 260 MW solar photovoltaic
  - 120 MW battery energy storage
  - 66 miles of access roads; 98 miles of collector lines
- Located in Umatilla County, approx. 4 miles south of Echo and 10 miles west of Pendleton.
- Main project area is 48,000 acres on the Cunningham Sheep Ranch and associated properties.
- Site studies and wind resource analysis since 2010.



A section of the Nolin Hills site area





# Nolin Hills Energy Project

Approximate locations of wind turbines and solar area shown.



# Wind Energy Component

- 340 MW of energy from up to 112 wind turbines.
- Maximum height of 496 ft.
- Current layout based on 3.0 MW turbines with a maximum height of 496 ft (151 meters).
- The actual turbine model will be selected based on several factors: optimal technical fit with the site and wind regime, generation capacity, cost-factors, availability.



# Solar Energy Component

- Solar photovoltaic anticipated to generate 260 MWs.
- Composed of up to ~816,812 solar modules.
- Anticipate site coverage: 1,896 acres.
- Connected directly to the battery energy storage system.



Capital Power's Beaufort Solar Facility,  
North Carolina



# Battery Energy Storage System

- A 120 MW battery energy storage system (BESS) will be located adjacent to the solar PV component.
- Will be used to deploy power generated from the solar PV system and wind energy facility.
- The specific BESS will be selected based on the technical fit with the overall project.



Typical Battery Storage Unit

***The BESS will allow for the deployment of electricity generated from non-emitting sources during low-wind and low-solar periods.***



# Other project elements

- Two project substations (16.4 acres)
- A maintenance building and yard (7.6 acres)
- Underground collector cables (89 miles)
- Overhead collector lines (9.1 miles)
- New site access roads (43 miles)
- Temporary access roads (19 miles)
- 3 meteorological towers (266 ft tall)
- Temporary construction yard (27 acres)



The operation and maintenance building at Capital Power's Cardinal Point Wind Energy Facility, Illinois.



# Nolin Hills Project – Transmission

- The Project will interconnect to the regional grid via either:
  - publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative (UEC), or
  - a new 230-kV transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration (BPA) Stanfield Substation.
- The lines would include a 230 kilovolt (kV) transmission line.



- Zoning Boundaries**
- Agri-business
  - Exclusive Farm
  - Exclusive Farm Use- 20
  - Exclusive Farm Use- 40
  - Exclusive Farm Use/ Limited Use Overlay
  - Exclusive Farm Use/Aggregate Resource Overlay
  - Exclusive Farm Use/Future Industrial Overlay
  - Heavy
  - Heavy Industrial/Aggregate Resource Overlay
  - Light
  - Light Industrial/Limited Use Overlay
  - Limited Rural Light
  - Rural Heavy
  - Rural Heavy Industrial/Aggregate Resource Overlay
  - Rural Light
  - Rural Residential-4
  - Rural Tourist
  - Unincorporated

## Nolin Hills Wind Power Project

Figure K-2  
Zoning

UMATILLA COUNTY, OREGON

- Proposed Site Boundary
- Analysis Area (0.5-mile Buffer)
- Urban Growth Boundary
- City Limit
- City/Town
- County Boundary
- Interstate Highway
- Secondary Highway
- Secondary Road



**Data Sources**

Capital Power-Project Infrastructure;  
ESRI-Roads, Topographic Basemap;  
Enterprise-Cities, County Boundaries;  
DLCD- Urban Growth Boundary;  
ArcGIS Feature Service-City Limit

**Reference Map**



P:\GIS\PROJECTS\CapitalPower\NolinHills\MXD\ASC\Enrht\_KC2\_NolinHills\_Ehnrht\_KC2\_Zoning\_11171\_20191216.mxd

1:145,000 WGS 1984 UTM Zone 11N 0 2.5 5 10 15 Miles NOT FOR CONSTRUCTION





# Local Economic Impacts

- Over \$100M of local property tax and related funds expected to be paid to Umatilla County; SIP Agreement anticipated.
- ~450,000 person hours required for project construction, with a peak of ~400 workers on site.
- Eight to 10 permanent full-time positions associated with the facility, generating approx. \$480,000 of employment income each year.
- Local market services regularly required by the facility during operations.
- General economic stimulation via anticipated total project cost of \$800M.
- We have long invested in programs to improve the quality of life in local communities. In 2021, we contributed more than \$1.89 million to organizations in the U.S. and Canada.



We proudly supported the volunteer fire department in Huckabay, Texas. The community is located near our Buckthorn Wind Energy Facility.



# Stakeholder Engagement

- Oregon Department of Fish and Wildlife (2017-2021)
- Oregon-California Trails Association (2019-2020)
- Native American / Confederated Tribes of the Umatilla Indian Reservation (CTUIR) (2017-2022)
- State Historic Preservation Office Coordination (2019-2021)
- Federal Aviation Administration & Dept of Defense (2019-2021)
- Oregon Dept of Geology and Mineral Industries (2018-2020)
- Local Fire Districts (2019-2021)
- Local Water Districts (Hermiston, Echo, Pendleton) (2019-2021)



# Resource Surveys

Activity	Timing
Pedestrian Habitat and Wildlife Surveys	2017-2020
Botanical Surveys	2017-2020
Cultural Resource Surveys	2017-2021
Washington Ground Squirrel Surveys	2017-2020
Wetlands and Waters Surveys	2017-2020
Visual Impact Analysis	2019-2021
Noise Modeling	2019-2021
Avian Surveys	2010, 2017-2018
Eagle Use and Raptor Nest Surveys	2011, 2017-2019
Bat Acoustic Survey	2017





**For more information please  
contact:**

**[publicconsultation@capitalpower.com](mailto:publicconsultation@capitalpower.com)**

**1-855-703-5005**

**[capitalpower.com](http://capitalpower.com)**



To the Oregon Energy Facility Siting Council (EFSC),

On behalf of the thousands of construction craft Laborers of the Laborers International Union of North America (LIUNA) Local 737, I and our union stand firmly in support of the Nolin Hills Wind Power Project. Our union has had a strong working relationship with the parent company of the applicant, Capital Power Corporation, and we believe Capital Power Corporation will uphold good labor standards on this project. These good labor standards are vital to ensuring Oregon's renewable energy industry is an industry that supports workers in Oregon. LIUNA Local 737 urges EFSC to approve the draft proposed order (DPO), and to ensure that this project proceeds to construction and completion.

With the passage of HB 2021 during the 2021 legislative session, our state enshrined into law many of the high road standards our union has historically pushed for on utility scale energy projects (10 MW and above). These high road standards include requiring contractors on all covered projects to: participate in an apprenticeship program, establish and execute plans for recruitment of women and minority workers with a goal of 15% utilization, have anti-harassment policies in place, be eligible to perform public work in the state of Oregon, demonstrate a seven year history of compliance with federal and state wage and hour laws, to pay area standard wages,<sup>1</sup> offer healthcare and retirement benefits to employees, and provide reporting and documentation and to respond to requests to verify any of the above conditions.<sup>2</sup> In lieu of demonstrating compliance with all these different aspects of the law, contractors may instead enter into a PLA and be "exempted" from these requirements. Because entering into a PLA ensures the highest degree of support for workers on projects, entering into a PLA is consistent with meeting the full intent and purpose of the law, and our state's law reflects this concept.

Capital Power Corporation has worked under PLAs in the past in other states, and thus has demonstrated its commitment to upholding the values behind HB 2021 through these good practices in other states. Our union looks forward to growing our own partnership with Capital Power Corporation, and we believe the firm will help ensure Oregon's renewable energy industry economy continues to lead the nation in good labor standards.

Our union requests that EFSC approve this draft proposed order.

Sincerely,

Zack Culver  
Business Manager

Laborers International Union of North America (LIUNA) Local 737

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<sup>1</sup> Also commonly referred to as "prevailing wage"

<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>

## **ESTERSON Sarah \* ODOE**

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**Subject:** Umatilla County Planning Department Comments - Nolin Hills DPO

**From:** Robert Waldher <robert.waldher@umatillacounty.gov>

**Sent:** Thursday, May 26, 2022 4:15 PM

**To:** ESTERSON Sarah \* ODOE <Sarah.ESTERSON@energy.oregon.gov>; SLOAN Kathleen \* ODOE <Kathleen.SLOAN@energy.oregon.gov>

**Subject:** Umatilla County Planning Department Comments - Nolin Hills DPO

Hi Sarah and Kate -

Thank you for the opportunity to do a quick tour of the site today and for the opportunity to provide comments on the DPO. I look forward to working through these comments with your Department as part of the SAG process. Please let me know if you have any questions.

Umatilla County Planning Department, as a reviewing agency for the Nolin Hills Project, provides the following comments related to the Draft Proposed Order (DPO):

### **Comment Related to Land Use and 2-Mile Setback Requirement**

Umatilla County Development Code (UCDC) Section 152.616 (HHH)(6)(a)(3) establishes a required 2-mile setback from a turbine tower to a rural residence. Based on the Planning Department's review, rather than recommending that the Energy Facility Siting Council (Council) find that the proposed facility is required to comply with the local substantive criteria found in UCDC Section 152.616 (HHH)(6)(a)(3), the DPO recommends that the Council find that the proposed facility would nevertheless comply with the applicable statewide planning goals, as allowed by ORS 469.504(1)(b)(8).

*Pursuant to OAR 345-022-0030 (3), "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group (SAG) recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the SAG does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.*

Umatilla County Planning Department interprets this provision of the Administrative Rule to imply that the local government is required by the statewide planning goals to have an acknowledged comprehensive plan and land use ordinances. These documents are considered the "applicable substantive criteria" that Umatilla County provided to the Oregon Department of Energy (Department) through the SAG process. Therefore, the Council shall apply the applicable substantive criteria (i.e. 2-mile setback), rather than evaluating the proposed facility against the statewide planning goals.

In addition, Umatilla County does not agree that just because the "applicable substantive criteria" (i.e. 2-mile setback requirement) is not explicitly "required" by the statewide planning goals, that the project is compliant with the applicable statewide planning goals. Counties are required, pursuant to state statute, to operate under an acknowledged comprehensive plan and implementing ordinances. A project that is not compliant with the local applicable substantive criteria of the comprehensive plan and implementing ordinances can't be compliant with the statewide planning goals.

### **Comments Related to Local Land Use Permits**

The DPO suggests since the Council is making the land use decision for the proposed Wind Power Generation Facility and Associated Transmission Line that the applicant is not required to obtain the Conditional Use Permit (generation facility) and Land Use Decision Permit (transmission line). This would be contrary to how previous permits have been processed. Past precedence has been for the applicant to still obtain permits, including conditional use permits and land use decisions, through the County Planning Department after the project site certificate has been issued by the Department. Umatilla County Planning Department requests a condition of approval requiring the applicant to obtain local land use permits prior to commencing project construction.

The DPO does not appear to recommend any conditions related to obtaining local land use permits for concrete batch plants and aggregate sources associated with construction of the proposed project. Umatilla County Planning Department requests a condition of approval requiring the applicant to obtain local land use permits prior to establishment of any aggregate site(s) and concrete batch plant(s) associated with the project.

Respectfully -

--

**Robert Waldher, RLA**

*Director*

Umatilla County Department of Land Use Planning

Tel: 541-278-6246 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.gov/planning>



*Please Be Aware* - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

**Subject:** public comment - nolin hills wind energy facility

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**From:** Columbia Feeders <[columbiafeeders@yahoo.com](mailto:columbiafeeders@yahoo.com)>  
**Sent:** Thursday, May 26, 2022 6:01:49 PM  
**To:** SLOAN Kathleen \* ODOE <[Kathleen.SLOAN@energy.oregon.gov](mailto:Kathleen.SLOAN@energy.oregon.gov)>  
**Subject:** public comment - nolin hills wind energy facility

### Public Comment for Nolin Hills Wind Energy Facility

Would ask for the following regarding siting of Transmission Line:

1. Utilize public right away for transmission line.
2. Ask the transmission line avoid overlying any property owned by ELH, LLC for the following reasons:
  - a. ELH, LLC smaller EFU property with high density utilization for large commercial permitted agriculture facility through ODA.
  - b. Transmission lines overlying the permit through ODA will complicate the current and long term use of the permitted commercial use of the property.
  - c. Adjacent properties are larger with less dense utilization agriculture use, with one of those adjacent properties has wind energy facility located on the property, previously sited through ODE.
3. Request utilization of single pole for least space requirements of a 230kv transmission line, anywhere near ELH, LLC property or adjacent properties, as these are high utilization commercial agriculture properties.

With that please consider alternative properties adjacent to ELH, LLC for placement of transmission lines, with less dense agriculture use for placement of transmission lines.

Thank you for your time. Please feel free to reach out with any further questions.

Dixie Echeverria  
ELH LLC



*Applicant*

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order  
05/26/2022

Public Written or Oral Testimony

Name Steve Corey (*Steven H. Corey*)  
Address PO Box 1186  
Pendleton, OR 97801

Written Testimony. Please write clearly.

*Previously submitted letter  
and will provide oral testimony*

Do you wish to make oral public testimony at this Hearing: Yes  No

Will your oral testimony on the project be: In Favor  Opposed  General/Neither In Favor or Opposed



CUNNINGHAM SHEEP & LAND COMPANY  
PENDLETON RANCHES, INC.  
MUD SPRINGS RANCHES  
HOKE RANCHES  
NOLIN FARMING CO.

## CUNNINGHAM SHEEP COMPANY

303 S.E. 3RD STREET • P.O. BOX 1186  
PENDLETON, OREGON 97801  
541-276-6391 • CSHEEPCO@GMAIL.COM

January 27, 2022

Sarah Esterson  
Senior Siting Analyst, Oregon Department of Energy  
550 Capitol St. NE, 1st Floor  
Salem, OR 97301  
(503) 378-4040  
[sarah.esterson@energy.oregon.gov](mailto:sarah.esterson@energy.oregon.gov)

Dear Ms. Esterson:

My family operates Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches, and owns, farms and ranches over 75,000 acres of agricultural lands in Umatilla County. We use this land for the raising of livestock, timber production, and dryland wheat agriculture. Much of our farm land is enrolled in the conservation reserve program (CRP) and about 2,500 acres are dedicated to dryland wheat production.

We are the primary landowner participating in the Nolin Hills wind and solar project being developed by Nolin Hills Wind, LLC. The solar generation facility of the Nolin Hills project is proposed to be located on approximately 1800 acres of our property.

We are confident the project's location in this area will not negatively impact our existing use of our land surrounding the solar project boundary or the overall success of our ranching and farming operations. We intend to continue and likely intensify our agricultural practices on the land surrounding the project boundary, which would total over 73,000 acres. Construction and operation of the project will not hinder our ranching and farming practices on the surrounding land.

Nor would the project negatively impact our access to irrigation or water rights. This land is not located within an irrigation district, and we are unaware of any certificated water rights associated with land inside the project boundary or land designated for solar facilities. There are no wells or ponds on the land designated for solar facilities, and we have no intention or need to apply for any water rights in this area at this time or in the foreseeable future.

In fact, the project will enable us to support and improve our farming and ranching operations in the surrounding areas by providing valuable lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments. With board approval we may also acquire, clean up and refurbish a contiguous agriculture-related business to strengthen the diversity base of our legacy farm. Like most farmers, we generally need to repair many farm buildings and add new ones. The lease payments projected exceed the potential revenues from the current dryland wheat production on the project boundary today.

The project will not result in any loss of employees for our operations. To the contrary, we expect to add agricultural jobs to our payroll based on the lease payments. Specifically, we may add to our team up to 6 new employees with anticipated wages of \$225,000 per year. . We also expect to maintain or, more likely, increase our operational spending with local agricultural suppliers and service providers, given our projected increased investment in operations on the land remaining in agricultural and ranching use and in the new agriculture-related business

We appreciate the opportunity to participate in this project, which we believe will ultimately help us improve the overall health and productivity of our agricultural land. Please feel free to contact me should Oregon Department of Energy require additional information.

Sincerely,



Steven H. Corey

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order

05/26/2022

Public Written or Oral Testimony

Name

CHUCK LITTLE

Address

17 WESTVIEW DRIVE  
HERMISTON, OR 97838

Written Testimony. Please write clearly.

Do you wish to make oral public testimony at this Hearing:

Yes

No

Will your oral testimony on the project be: In Favor

Opposed

General/Neither In Favor or Opposed

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order

05/26/2022

Public Written or Oral Testimony

Name James Peters

Address 17230 NE Sacramento Street

Portland, Oregon 97236

Written Testimony. Please write clearly.

My name is James Peters and I am a member of laborers local 737 and I am in support of this project because it is a win-win for Oregon we harness more green energy and create jobs for Oregon residents.

Do you wish to make oral public testimony at this Hearing: Yes  No

Will your oral testimony on the project be: In Favor  Opposed  General/Neither In Favor or Opposed

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order  
05/26/2022

Public Written or Oral Testimony

Name

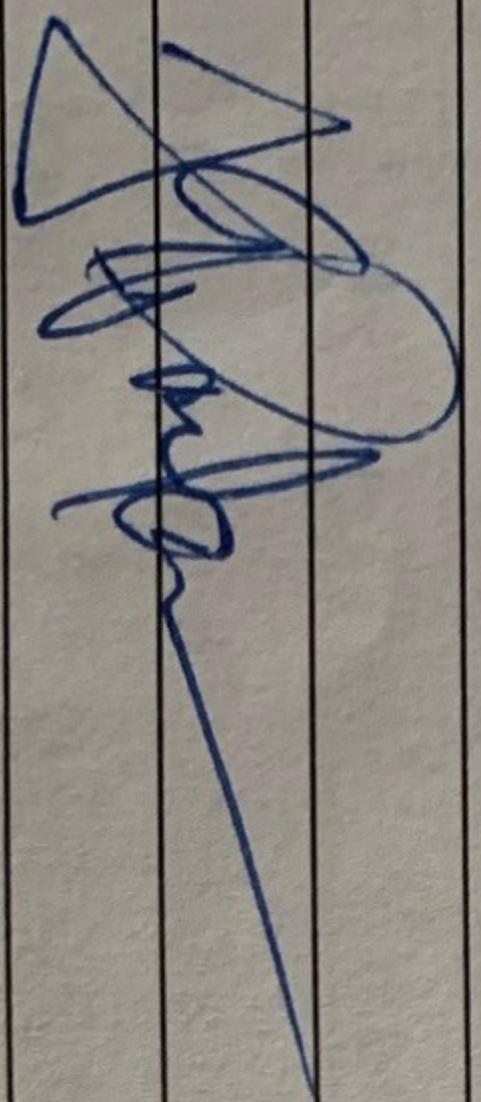
Jodi Gustinos Parker

Address

17230 NE SACRAMENTO ST. 202  
PORTLAND OR 97230

Written Testimony. Please write clearly.

Will SUBMIT AFTER TESTIMONY.



Do you wish to make oral public testimony at this Hearing:

Yes

No

Will your oral testimony on the project be: In Favor

Opposed

General/Neither In Favor or Opposed

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order

05/26/2022

Public Written or Oral Testimony

Name Jontae Clardy

Address 17230 NE Sacramento St.

Suite 202 Portland OR.  
97230

Written Testimony. Please write clearly.

Thank you for traveling to Pendleton to have this meeting

My name is Jontae Clardy and I am a member of Laborers Local 737.

I have worked my career as a Union Labor and am proud to say I have  
helped build many progressive and energy efficient projects. I am here  
today to add my voice to the support for the Nolan Hills Wind Power Project

Do you wish to make oral public testimony at this Hearing:

Yes

No

Will your oral testimony on the project be: In Favor  Opposed  General/Neither In Favor or Opposed

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order  
05/26/2022

## Public Written or Oral Testimony

Name DOUSTY WEST  
Address 18121 SE OATFIELD RD  
MILWAUKEE OR 97267

Written Testimony. Please write clearly.

ALSO

PROVIDING WRITTEN TESTIMONY

You wish to make oral public testimony at this Hearing: Yes  No   
Your oral testimony on the project be: In Favor  Opposed  General/Neither In Favor or Opposed





# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order

05/26/2022

Public Written or Oral Testimony

Name

Serr Grant

Address

12230 NE Sacramento St, Portland OR

Written Testimony. Please write clearly.

Good Evening, I am a member of laborers local 787,

The wind & solar & battery storage proposed in the Nolin Hills wind energy facility will provide work opportunities for our members. These are covers that include family wages, health & retirement benefits. Council please continue to support this project.

Do you wish to make oral public testimony at this Hearing:

Yes

No

Will your oral testimony on the project be: In Favor \_\_\_\_\_ Opposed \_\_\_\_\_ General/Neither In Favor or Opposed \_\_\_\_\_

# Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order

05/26/2022

Public Written or Oral Testimony

Name Eric Ansen

Address 17230 NE Sacramento St.  
Portland, OR, 97230

Written Testimony. Please write clearly.

For my experience of 17 years doing this type of work I  
have witnessed this kind of work change lives, communities and  
families for the best. This project is a must eastern Oregon.

Do you wish to make oral public testimony at this Hearing: Yes \_\_\_\_\_ No X

Will your oral testimony on the project be: In Favor \_\_\_\_\_ Opposed \_\_\_\_\_ General/Neither In Favor or Opposed \_\_\_\_\_