

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules and)
Other Requirements Applicable to the Proposed)
Saddle Butte Wind Park)
_____)

PROJECT ORDER

1 On August 7, 2009, Saddle Butte Wind LLC, (the applicant) submitted a Notice of Intent
2 (NOI) to Apply for a Site Certificate for the Saddle Butte Wind Park (SBWP). The proposed
3 facility is a wind energy facility consisting of up to 171 wind turbines and related facility
4 components with a peak generating capacity of up to 565 megawatts. The proposed facility site is
5 entirely on private lands located in Morrow County and Gilliam County.

6 On August 17, 2009, the Department sent a public notice of the NOI to persons on the
7 general mailing list of the Oregon Energy Facility Siting Council (Council), to persons on the
8 special list set up for the project and to property owners identified in the NOI, as required under
9 OAR 345-015-0110.

10 On August 17 and 18, 2009, the applicant sent copies of the NOI to a list of reviewing
11 agencies provided by the Oregon Department of Energy (Department) together with a
12 memorandum from the Department as described in OAR 345-015-0120.

13 On August 30, 2009, the Department published notice of the NOI in the *East Oregonian*
14 and the *Condon Times-Journal*.

15 On September 10, 2009, the Department held a public information meeting about the
16 proposed SBWP and the site certificate process in Arlington, Oregon, as described in OAR 345-
17 015-0130. The Department accepted public comment on the NOI through September 25, 2009.

18 Under ORS 469.330, the Department must issue a project order following review of a
19 notice of intent and any public comments received in response to the notice of intent. Under
20 OAR 345-015-0160, the Department must send the project order to the applicant following the
21 review and any public information meeting. OAR 345-015-0160(1) requires, in relevant sections,
22 that the Department issue a project order that establishes the following:

- 23 (a) All state statutes and administrative rules containing standards or criteria that must be
24 met for the Council to issue a site certificate for the proposed facility, including
25 applicable standards of OAR Chapter 345, Divisions 22, 23 and 24.
- 26 (b) All local government ordinances applicable to the Council’s decision on the proposed
27 facility.
- 28 (c) All application requirements in OAR 345-021-0010 applicable to the proposed
29 facility.
- 30 (d) All state and local permits necessary to the construction and operation of the
31 proposed facility and the name of each agency with the authority to issue such
32 permits.
- 33 (e) Any other data and information that must be included in the application for a site
34 certificate to allow the Council to determine whether the proposed facility will

1 comply with applicable statutes, administrative rules and local government
2 ordinances.

3 (f) The analysis areas for the proposed facility.

4 (g) Public concerns that address matters within the jurisdiction of the Council that the
5 applicant shall consider and discuss in the application for a site certificate, based on
6 comments from the public and reviewing agencies.

7 (h) If the applicant has identified one or more proposed corridors in Exhibit D of the
8 notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the
9 corridor(s) that the applicant shall evaluate in the corridor selection assessment
10 described in OAR 345-021-0010(1)(b).

11 (i) The expiration date of the notice of intent.

12 ORS 469.401(4) provides that a site certificate does not govern certain matters. This
13 project order does not address matters that are outside the Council's jurisdiction. The applicant
14 must nevertheless comply with all statutes, regulations and local ordinances applicable to the
15 proposed facility. This includes, but is not limited to, employee health and safety regulations,
16 building code compliance, labor regulations and local government fees or charges.

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

21 THEREFORE, the Department orders as follows:

I. STATUTES, ADMINISTRATIVE RULES, RELATED PERMITS OR OTHER APPROVALS AND DISCUSSION OF SPECIFIC INFORMATION

22 This section identifies the Oregon statutes and administrative rules that the applicant must
23 address in the application and identifies related state permits and approvals. This section
24 discusses specific information to be included in the application.

1. Energy Facility Siting Council

25 **Statute and Rule References:** ORS 469.300 to ORS 469.507; OAR Chapter 345,
26 Divisions 1, 21, 22, 24, 26 and 27.

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

28 **Discussion:** Section V below describes specific application requirements under OAR 345-
29 021-0010.

30 All general standards in OAR Chapter 345, Division 22, apply to the proposed facility.
31 For a wind energy facility, the Council need not make findings on the standards described
32 in OAR 345-022-0020 (Structural), OAR 345-022-0090 (Historic, Cultural and
33 Archaeological Resources), OAR 345-022-0110 (Public Services) and OAR 345-022-
34 0120 (Waste Minimization). Nevertheless, the applicant should address these standards in
35 the application because the Council may apply the requirements of the standards to
36 impose conditions in the site certificate.

1 If the Council issues a site certificate for the proposed facility, the certificate holder must
2 implement a compliance plan, as described in OAR 345-026-0048. The site certificate will
3 contain the mandatory conditions, applicable site-specific conditions and monitoring
4 conditions described in OAR 345-027-0020, -0023 and -0028.

2. Oregon Department of Agriculture – Plant Conservation

5 **Statute and Rule References:** ORS Chapter 564; OAR Chapter 603, Division 73.

6 **Permit:** None required.

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

10 The State list of threatened and endangered plant species is contained in OAR 603-073-
11 0070. In addition, OAR 603-073-0080 gives ODA the authority to designate candidate
12 plants. If the applicant finds any State-listed threatened or endangered plant species that
13 could be adversely affected by the proposed facility, then the applicant must address the
14 information requirements of OAR 603-073-0090(5)(d)(A)-(E) in the application.

15 The applicant should include in its application a list of both State-listed and federally-
16 listed threatened, endangered and candidate plant species that have potential to occur in
17 the analysis area. The applicant should identify these species based on a review of
18 literature, consultation with knowledgeable individuals and reference to the list of species
19 published by the Oregon Natural Heritage Information Center.¹

20 The applicant should include in its application a description and the results of a field
21 survey for the listed plant species performed by qualified survey personnel during the
22 season or seasons appropriate to the detection of threatened, endangered and candidate
23 plant species. The field survey report should include written descriptions of the survey
24 methods and areas surveyed. The applicant should consult with the ODA Native Plant
25 Conservation Program regarding field survey methods, appropriate survey seasons and
26 qualifications of field survey personnel.

3. Department of Environmental Quality – Water Quality

27 **Statute and Rule References:** ORS Chapter 468B; OAR Chapter 340, Divisions 40, 45
28 and 71.

29 **Permits:** National Pollutant Discharge Elimination System (NPDES), Water Pollution
30 Control Facilities (WPCF) permits and on-site sewage disposal construction-installation
31 permits.

32 **Discussion:** Under OAR 345-021-0000(7), the Department may not find a site certificate
33 application complete unless the applicant has submitted to the Department a copy of each

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

1 federally-delegated permit application. The applicant must provide a letter or other
2 indication from the Oregon Department of Environmental Quality (DEQ) stating that the
3 agency has received a permit application from the applicant, identifying any additional
4 information the agency needs from the applicant and estimating the date when the agency
5 will complete its review and issue a permit decision.

6 Storm Water

7 The U.S. Environmental Protection Agency has delegated authority to DEQ to issue
8 NPDES Storm Water Discharge permits. The Council does not have jurisdiction over the
9 federally-delegated NPDES permits, but the Council may rely on the determinations of
10 compliance and the conditions in the federally-delegated permits in making its
11 determination about whether other standards and requirements under the Council's
12 jurisdiction are met.

13 Septic System

14 The applicant proposes to construct an on-site field workshop. Wastewater from uses at
15 the field workshop would be discharged to a septic system. DEQ may require a WPCF
16 permit or an on-site sewage disposal construction permit. In the site certificate application,
17 the applicant should provide information demonstrating that the proposed septic system is
18 exempt from the WPCF permit requirement or, if it is not exempt, that it meets the
19 requirements for a permit. The substantive requirements for WPCF permits and on-site
20 sewage construction permits are set forth in OAR Chapter 340, Division 71. The specific
21 regulations for WPCF permits are set forth in OAR Chapter 340, Division 45,
22 "Regulations Pertaining to NPDES and WPCF Permits."

4. Department of Environmental Quality – Hazardous Materials

23 **Statute and Rule References:** ORS Chapters 465 and 466; OAR Chapter 340, Divisions
24 100 through 122.

25 **Permit:** None required.

26 **Discussion:** The applicant must include in the application a list of all hazardous materials
27 that potentially would be stored or used at the facility site during construction and
28 operation. The applicant must comply with DEQ regulations concerning the use, clean up
29 and disposal of hazardous materials.

5. Department of Environmental Quality – Noise Control Regulations

30 **Statute and Rule References:** ORS 467.020 and ORS 467.030; OAR 340-035-0035

31 **Permit:** None required.

32 **Discussion:** The proposed facility must comply with the noise control regulations
33 applicable to wind energy facilities. The requirement is incorporated in the general
34 standard of review, OAR 345-022-0000. The applicant must include a noise analysis in
35 the application. The analysis must contain information to support a finding by the Council
36 that the proposed facility could comply with the requirements of OAR 340-035-0035. The
37 analysis must:

- 1 • Identify the locations of all noise sensitive properties that might receive noise
- 2 levels potentially exceeding applicable limits from SBWP turbines.
- 3 • Identify all potential noise sources from facility components (for example, wind
- 4 turbines and substation transformers).
- 5 • Identify all turbine locations used in performing the analysis.
- 6 • Provide manufacturer’s warranted sound power levels and uncertainty ranges,
- 7 including octave band data, for all turbine types that might be used at the SBWP
- 8 (if specific turbine types are not known, the applicant must provide the maximum
- 9 sound power level and octave band data that would not be exceeded by any
- 10 turbine type used at the SBWP).
- 11 • Identify all input parameters used in performing noise modeling.
- 12 • Provide noise modeling output data.

6. Oregon Department of Fish and Wildlife

13 **Statute and Rule References:** ORS Chapters 496, 498, 506 and 509; OAR Chapter 635,

14 Divisions 100 and 415.

15 **Permit:** None required.

16 **Discussion:** The Oregon Department of Fish and Wildlife (ODFW) provides technical

17 review and recommendations on compliance with Council standards. ODFW will base its

18 review and recommendations on state wildlife policy (ORS 496.012), threatened and

19 endangered species policy (ORS 496.171 - .192), food fish management policy (ORS

20 506.109), State Sensitive Species and State Threatened and Endangered Species rules

21 (OAR Chapter 635, Division 100) and habitat mitigation goals and standards (OAR

22 Chapter 635, Division 415).

23 OAR Chapter 635, Division 100, provides authority for adoption of the state sensitive

24 species list and the Wildlife Diversity Plan and contains the State list of threatened and

25 endangered wildlife species. The applicant should include in its application a list of both

26 State-listed and federally-listed threatened and endangered wildlife species and State

27 Sensitive Species that have potential to occur in the analysis area. The applicant should

28 identify these species based on a review of literature, consultation with knowledgeable

29 individuals and reference to the list of species published by the Oregon Natural Heritage

30 Information Center.

31 The applicant should consult with ODFW regarding field survey methods, appropriate

32 survey seasons and qualifications of field survey personnel. The applicant should include

33 in its application a description of a field survey for the listed wildlife species performed by

34 qualified survey personnel during the season or seasons appropriate to the detection of

35 these species. The field survey report should include written descriptions of the survey

36 methods and areas surveyed. The report should include an analysis of the findings of the

37 field survey.

38 OAR Chapter 635, Division 415, describes six habitat categories and establishes a

39 mitigation goal for each category. In the application, the applicant must identify the

1 appropriate habitat category for all areas affected by the proposed facility (temporary and
2 permanent impacts) and explain the basis for each category designation. The applicant
3 must show how the facility would comply with the habitat mitigation goals and standards
4 by appropriate monitoring and mitigation.

7. Department of Geology and Mineral Industries

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

6 **Permit:** None required.

7 **Discussion:** The Department of Geology and Mineral Industries (“DOGAMI”) provides
8 technical review and recommendations on compliance with the Council’s structural
9 standard, OAR 345-022-0020. In the application, the applicant must include the
10 information required by OAR 345-021-0010(1)(h) and OAR 345-021-0010(1)(i).

11 The Department understands that wind developers typically do not perform the detailed
12 geotechnical exploration described in engineering geological reports and site-specific
13 seismic hazard reports until they have identified exact turbine sites. If the applicant plans
14 to defer some of the site-specific geotechnical work pending completion of facility design,
15 then the application must include evidence of personal consultation with DOGAMI staff
16 regarding the appropriate level of site-specific geotechnical investigation that the
17 application should address.

8. Oregon Parks and Recreation Department

18 **Statute and Rule References:** ORS 97.745, 358.920, 390.010 and 390.235; OAR
19 Chapter 736, Division 51.

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

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

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

30 **Note:** Information concerning the location of archaeological sites or objects may be
31 exempt from public disclosure under ORS 192.501(11). Please do not include specific
32 location information in the text of site certificate application. Such sensitive information,
33 including archaeological survey reports, should be provided separately after consultation
34 with the Department.

9. Oregon Department of State Lands

35 **Statute and Rule References:** ORS 196.795 through 196.990; OAR Chapter 141,
36 Division 85.

1 **Permit:** Removal/Fill Authorization.

2 **Discussion:** The applicant should include information in the application to demonstrate
3 whether a removal-fill authorization is needed. The application should include a
4 delineation of potentially jurisdictional wetlands and waters in all areas to be affected by
5 the proposed facility. If a removal-fill authorization is needed, the application must
6 include the information described in OAR 141-085-0550.

10. Water Resources Department – Water Rights Division

7 **Statute and Rule References:** ORS Chapters 537 and 540; OAR Chapter 690, Divisions
8 200 through 240, 310, 340 and 380.

9 **Permit:** Water right.

10 **Discussion:** The applicant should include information in the application to support
11 findings on whether a water right is needed. The application must identify the sources of
12 water that could be used by the facility, the water rights under which the water would be
13 provided, the quantity of water needed and the means of disposal of all water discharges
14 from the facility.

15 If the applicant will need to obtain a new water right or water right transfer, the
16 application must include information demonstrating that the requirements for issuing a
17 permit are met. These requirements are found in ORS Chapter 537 (for a groundwater or
18 surface water permit) and ORS Chapter 540 (for transfer of a water use). In the
19 application, the applicant should include a discussion and evaluation of all relevant
20 factors, including those factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and
21 OAR Chapter 690, Divisions 310 and 380. If a permit or transfer is needed, the Council
22 will make the issuing decision in consultation with the Water Resources Department.

23 The applicant proposes to construct a water well near the field workshop. The well would
24 provide no more than 5,000 gallons of water per day for use during facility operation. The
25 application should include information demonstrating that water use from the well would
26 be exempt from water right permitting under ORS 537.545. SB 788 (2009) amended ORS
27 537.545 to require the owner of land on which an exempt well is drilled to provide a map
28 to WRD showing the exact location of the well and to file the exempt water use with
29 WRD for recording with submittal of a fee.

11. Oregon Department of Aviation

30 **Statute and Rule References:** ORS Chapters 836; OAR Chapter 738, Division 70.

31 **Permit:** None required.

32 **Discussion:** Both the Federal Aviation Administration (FAA) and the Oregon Department
33 of Aviation are responsible for determining whether any wind turbine tower presents a
34 hazard to aviation in Oregon. ORS 836.530 authorizes the Oregon Department of Aviation
35 to adopt rules to “define physical hazards to air navigation and determine whether specific
36 types or classes of objects or structures constitute hazards.” The agency has adopted rules
37 in OAR Chapter 738, Division 70, regarding physical hazards to air safety. The applicant
38 should discuss aviation safety in the site certificate application in reference to the Public
39 Health and Safety Standards for Wind Energy Facilities (OAR 345-024-0010).

II. TRIBES

1 **Permit:** None required.

2 **Discussion:** The application should include evidence of consultation with affected tribes,
3 including the Confederated Tribes of Umatilla Indian Reservation and the Confederated
4 Tribes of Warm Springs, regarding archaeological and cultural sites and materials within
5 the site boundary. The affected tribes provide technical review and recommendations in
6 reference to the Council's Historic, Cultural and Archaeological Resources Standard
7 (OAR 345-022-0090).

III. APPLICABLE LOCAL GOVERNMENT ORDINANCES

8 **Local Governments:** Morrow County and Gilliam County.

9 **Statute and Rule References:** Applicable substantive criteria from the Morrow County
10 and Gilliam County codes and comprehensive plans.

11 **Permit:** Conditional Use Permit.

12 **Discussion:** In the application, the applicant may elect to request a Council determination
13 regarding land use in accordance with ORS 469.504(1)(b) or to seek land use approval
14 from the applicable local governments. In the NOI, the applicant has indicated the
15 intention to seek a Council determination regarding land use.

16 Because parts of the proposed facility are located in Gilliam County and other parts are
17 located in Morrow County, the Council must consider the applicable substantive criteria
18 from both counties. The governing bodies of both counties have been appointed as Special
19 Advisory Groups, as required under ORS 469.480. The applicable substantive criteria, as
20 defined by ORS 469.504(1)(b)(A), are those criteria identified by the Special Advisory
21 Groups that are required by the statewide planning goals and in effect on the date the
22 Preliminary Application is submitted (see OAR 345-021-0000(10)).

23 In addition, the application must identify any Land Conservation and Development
24 Commission administrative rules and goals and any land use statutes that are not
25 implemented in the counties' comprehensive plans and are therefore directly applicable to
26 the facility under ORS 197.646. The applicant should demonstrate how the proposed
27 facility would comply with OAR 660-033-0130(37), if applicable.

28 In the application, the applicant should discuss each land use ordinance and
29 comprehensive plan policy that contains substantive criteria and should demonstrate how
30 the proposed facility complies with those criteria. If the proposed facility does not comply
31 with one or more of the criteria, the applicant must demonstrate how the proposed facility
32 complies with the applicable statewide planning goal. If the proposed facility does not
33 comply with the goal, the applicant must demonstrate that an exception is justified under
34 ORS 469.504(2).

35 The applicant should contact the Gilliam County and Morrow County Planning Directors
36 to discuss the requirements for Conditional Use Permits and any other land use permits
37 that may be required for the proposed SBWP. As provided in ORS 469.401(3), if the
38 Council issues a site certificate, the County will be bound to issue local land use permits,
39 subject only to the conditions set forth in the site certificate.

IV. OTHER CONSTRUCTION-RELATED REGULATIONS

1 If the Council issues a site certificate, the certificate holder must comply with
2 construction-related regulations that apply to the proposed facility. As provided under ORS
3 469.401(4), the site certificate does not address these regulations.

V. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21

4 The application should include the information described in OAR 345-021-0010(1),
5 including but not limited to the information discussed below. In addition, the applicant must
6 submit the information required by OAR 345-021-0000, particularly the information in sections
7 (6) and (7) regarding the status of non-federally-delegated and federally delegated permits. The
8 applicant should provide sufficient information under OAR 345-021-0010(1) to demonstrate that
9 the proposed facility would comply with the Council standards described in OAR Chapter 345,
10 Divisions 22 and 24.

(a) Exhibit A – General Information about the Applicant

11 Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of
12 “participating persons, other than individuals.” “Person” is defined in OAR 345-001-
13 0010(45). If the applicant is a limited liability company (LLC), the applicant must
14 provide information about the LLC similar to the information listed in the rule for
15 corporations (OAR 345-021-0010(1)(a)(C)). The applicant must include in the
16 application information about all third-party entities (persons other than individuals) that
17 are important to the project.
18

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

19 All paragraphs apply except (A)(vi), (A)(vii) and (A)(viii).
20

21 The applicant must provide specifications on all turbine types that might be used at the
22 facility. If specific turbine types are not known, the applicant must provide information
23 on the range of turbine types that might be used. Specifications include: peak generating
24 capacity, turbine hub height in meters, rotor diameter in meters, maximum sound power
25 level (and octave band data), overall weight of metals in the tower and nacelle per turbine
26 in net (U.S.) tons, estimated cubic yards of concrete per turbine in the tower foundation
27 and transformer pad to a depth of three feet below grade (that is, the concrete in the
28 foundation above that depth including any portion above grade) and the maximum
29 diameter of the foundation. The applicant must state the maximum number of turbines
30 that would be built and the maximum combined peak generating capacity of the facility
31 as a whole.

32 The NOI describes a 230-kV transmission line that would be more than 10 miles in
33 length and would be constructed in more than one county. The line would not be
34 constructed entirely within 500 feet of an existing corridor. Therefore, the application
35 must include a corridor selection assessment as described in paragraph (D).

36 The application must include a physical description of all components of the facility and
37 their proposed locations including, but not limited to, turbines, met towers, new access
38 roads, modifications of existing roads, transmission lines (including collector lines),
39 substations, interconnection facilities and workshops or O&M buildings.

1 (c) Exhibit C – Location

2 All paragraphs apply.

3 Maps included in Exhibit C should provide enough information for property owners
4 potentially affected by the facility to determine whether their property is within or near
5 the site. Major roads should be named.

6 The application should identify lands enrolled in the Conservation Reserve Program and
7 lands currently used for commercial agriculture. If OAR 660-033-0130(37) is applicable,
8 the application should include maps showing the location of “high-value farmland soils”
9 within the site boundary.

10 Maps should show the location of the site boundary as defined in OAR 345-001-
11 0010(53). The proposed turbine string layout should be indicated. The application should
12 include alternative layouts if the use of different turbine sizes would result in different
13 turbine string alignments.

14 Although a legal description of the site is not required under paragraph (B), the
15 application must include a written description of the micrositing corridors in addition to a
16 map. A legal description of the site will be needed if a site certificate is issued. See OAR
17 345-027-0020(2). The applicant is advised to anticipate the need for a legal description
18 when deciding where to draw the boundary lines of the micrositing corridors for the
19 purposes of the application (for example, straight boundary lines are easier to describe
20 than curved or intricate boundaries).

21 (d) Exhibit D – Organizational Expertise

22 All paragraphs apply.

23 (e) Exhibit E – Permits

24 All paragraphs apply.

25 (f) Exhibit F – Property Owners

26 The entire site is within a farm zone. Accordingly, the distance in paragraph (C) applies
27 (500 feet from the site boundary).

28 (g) Exhibit G – Materials Analysis

29 All paragraphs apply.

30 (h) Exhibit H – Geology

31 All paragraphs apply.

32 (i) Exhibit I – Soils

33 All paragraphs apply. The application should include information describing the impact
34 of construction and operation of the proposed facility on soil productivity in farm zones.
35 Describe all measures proposed to maintain soil productivity during construction and
36 operation. The applicant should consult with local farmers, landowners and soil
37 conservation districts regarding mitigation of impacts to farmland. The application should
38 include a description of accepted farm practices on surrounding lands devoted to farm
39 use.

1 (j) Exhibit J – Jurisdictional Waters

2 All paragraphs apply. If a removal/fill authorization is likely to be needed, the applicant
3 should engage a qualified expert to survey the site and prepare a wetlands and waters
4 delineation report. The report should be submitted to the Department of State Lands as
5 early as possible for review and possible concurrence. This can be done in advance of
6 submitting the Preliminary Application.

7 Note: The Department of State Lands has amended the rules in OAR Chapter 141,
8 Division 85. The definition of “waters of this state” is now found in OAR 141-085-0510.
9 removal/fill authorizations are described in OAR 141-085-0540.

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

11 Paragraphs A and C apply. Paragraphs B and D do not apply. The application should
12 include a discussion of whether the proposed facility would be compatible with farm use,
13 would not seriously interfere with accepted farm practices and would not significantly
14 increase the cost of accepted farm practices. See further discussion under Part III above.

15 (l) Exhibit L – Protected Areas

16 All paragraphs apply.

17 (m) Exhibit M – Financial Capability

18 All paragraphs apply.

19 (n) Exhibit N – Need for the Facility

20 Exhibit N does not apply.

21 (o) Exhibit O – Water Use

22 All paragraphs apply except (D).

23 (p) Exhibit P – Fish and Wildlife Habitat

24 All paragraphs apply. The applicant should consult with the Oregon Department of Fish
25 and Wildlife regarding the classification of habitat within the site boundary. The
26 applicant should accurately classify all habitat within the micro-siting areas. Complete
27 habitat classification will identify areas of high-value habitat that should be avoided in
28 the final design layout. The application should include a table showing the quantity of
29 habitat (in acres) that would be affected temporarily during construction and permanently
30 (by placement of facility components) broken down by habitat category and habitat
31 subtype. The application should include tables for both the expected or typical facility
32 layout and for a “maximum habitat impacts” layout. The maximum habitat impacts table
33 should be based on a buildable project layout with all components hypothetically located
34 where they would affect the greatest quantity of higher-value habitat within the
35 micro-siting area (but avoiding proposed exclusion areas, such as Category 1 habitat). The
36 maps required under paragraph (C), must be of sufficient scale to show details (a scale of
37 1 inch = 2,000 feet is suggested).

38 The application must include a proposed Wildlife Monitoring and Mitigation Plan, a
39 proposed Revegetation Plan and a proposed Habitat Mitigation Plan.

1 (q) Exhibit Q – Threatened and Endangered Species

2 All paragraphs apply.

3 (r) Exhibit R – Scenic Resources

4 All paragraphs apply. Copies of the local, tribal and federal plans (or relevant excerpts)
5 that identify scenic resources as significant or important should be included as
6 attachments to the exhibit (or, if the documents are available on-line, the application
7 should include the website address). Zone of Visual Influence modeling or photo-
8 simulations may be included to help demonstrate compliance with the Council standard
9 (OAR 345-022-0080).

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

11 All paragraphs except (C) apply.

12 Information concerning the location of archaeological sites or objects may be exempt
13 from public disclosure under ORS 192.502(4) or ORS 192.501(11). The applicant should
14 submit such information separately, clearly marked as “confidential” with a written
15 request that the Department and the Council keep the information confidential to the
16 extent permitted by law.

17 (t) Exhibit T – Recreation

18 All paragraphs apply.

19 (u) Exhibit U – Public Services

20 All paragraphs apply. Include an analysis of estimated facility-related traffic during
21 construction and operation and the potential impact on traffic safety.

22 The application should include a discussion of the transportation of heavy equipment and
23 large facility components to the site during construction. The applicant should describe
24 the transporter routes from the nearest Interstate Highway to the construction areas and
25 should determine whether any alterations of public roads would be needed along these
26 routes. The applicant should consult with the Oregon Department of Transportation and
27 county public works departments regarding transporter routes. The application must
28 describe any alterations of public rights-of-way or adjacent lands that will be necessary
29 during facility construction.

30 (v) Exhibit V – Solid Waste and Wastewater

31 All paragraphs apply.

32 (w) Exhibit W – Facility Retirement

33 All paragraphs apply. The Department recommends estimating site restoration costs
34 based on determining the unit costs for removal of facility components and reclamation
35 of the affected lands. The applicant should review recent Siting Council orders as a guide
36 to the level of detail required in the cost estimate. The Siting Council does not allow any
37 deduction for the salvage or scrap value of wind turbines or turbine towers.

1 (x) Exhibit X – Noise

2 All paragraphs apply. The applicant should engage a qualified expert to conduct a noise
3 modeling analysis demonstrating that the proposed facility could be built in compliance
4 with the applicable noise regulations. Include a map showing the location of potentially
5 affected noise sensitive properties and data demonstrating the contribution of each noise
6 source to the predicted noise levels at those properties. The application should specify
7 any waivers that the applicant would need from affected property owners if the predicted
8 noise levels would exceed the ambient degradation standard. If such waivers have been
9 negotiated, the applicant should include copies of the waivers (with proof of recording in
10 the real property records of the county). If waivers have not been negotiated, the
11 applicant should inform the affected property owners of the potential noise levels at the
12 affected residences and request the waivers. If a waiver that is necessary to achieve
13 compliance for the desired facility layout cannot be negotiated with the landowner, the
14 applicant will have to re-design the facility layout to achieve compliance without the
15 waiver.

16 (y) Exhibit Y – Carbon Dioxide Emissions

17 Exhibit Y does not apply.

18 (z) Exhibit Z – Cooling Tower Impacts

19 Exhibit Z does not apply.

20 (aa) Exhibit AA – Electric and Magnetic Fields

21 All paragraphs apply to the transmission lines that are components of the facility,
22 including aboveground and underground collector cables.

23 (bb) Exhibit BB – Other Information

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

25 (cc) Exhibit CC – Other Law

26 Exhibit CC applies.

27 (dd) Exhibit DD- Specific Standards

28 Paragraphs (A) and (C) apply.

VI. ANALYSIS AREAS FOR THE PROPOSED FACILITY

29 The analysis areas are the minimum areas that the applicant must study for potential
30 impacts from the construction and operation of the proposed facility. The analysis areas
31 described in this project order do not limit the applicant’s responsibility to assess the potential
32 impacts of the facility. Analysis areas are the areas in which significant adverse impacts from the
33 proposed facility, if any, are likely to occur. If significant impacts could occur beyond the
34 analysis areas described herein, then the applicant must assess those impacts in the application
35 and show how the facility would comply with the applicable standards with regard to the larger
36 area where impacts could occur.

37 For all potential impacts, the analysis area includes all the area within the site boundary.
38 “Site boundary” means “the perimeter of the site of a proposed energy facility, its related or

1 supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting
 2 corridors proposed by the applicant.” (OAR 345-001-0010(53)). In the application, the applicant
 3 must specifically describe the site boundary and provide a map showing the proposed site
 4 boundary and the boundaries of the analysis areas. The analysis areas are as follows:

<u>Affected Standard or Resource</u>	<u>Exhibit</u>	<u>Analysis Area</u>
Structural Standard	H	The area within the site boundary.
Soils	I	The area within the site boundary.
Wetlands and Waters	J	The area within the site boundary.
Land Use	K	The area within the site boundary and one-half mile from the site boundary.
Protected Areas	L	The area within the site boundary and 20 miles from the site boundary, including areas outside the state.
Fish and Wildlife Habitat	P	The area within the site boundary and one-half mile from the site boundary.
Threatened and Endangered Species	Q	The area within the site boundary and 5 miles from the site boundary.
Scenic Resources	R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	S	The area within the site boundary.
Recreation	T	The area within the site boundary and 5 miles from the site boundary.
Public Services	U	The area within the site boundary and 10 miles from the site boundary.

VII. PUBLIC AND REVIEWING AGENCY CONCERNS

5 The Department received comments on the NOI from the following reviewing agencies
 6 and members of the public. The Department has sent copies of all written comments to the
 7 applicant. The applicant responded to questions raised in person at the public information
 8 meeting on September 10, 2009. The application requirements discussed above cover all issues
 9 discussed at the information meeting that are not otherwise addressed in the summary below.

10 In the application, the applicant should respond to the issues raised in the comments
 11 summarized below. The Department notes that recommendations expressed in the comments
 12 summarized below reflect the commenter’s opinions and do not necessarily represent the
 13 Department’s own recommendations. If additional comments are received during the review
 14 process, the Department may request that the applicant respond to those comments and provide
 15 additional information.

1. Reviewing Agency Comments

16 The Department received the following comments on the NOI from reviewing agencies:

17 Susan Lynn White, State Historic Preservation Office (letter, 8/20/09):

- 18 • The NOI acknowledges the need to conduct a cultural resources assessment
 19 survey. The SHPO looks forward to reviewing the report.

1 Jan Houck, Oregon Parks & Recreation Department (email, 8/27/09):

- 2 • The John Day Scenic Waterway is a State Scenic Waterway. The J.S. Burres State
3 Park is a State Park in Gilliam County managed by the Bureau of Land
4 Management. The Arlington Wayside is an undeveloped wayside near Arlington.
5 The application should acknowledge and analyze these areas. In addition, in a
6 follow-up email, Jan Houck identified an additional area recently purchased by
7 the State consisting of over 2,400 acres along the John Day River Scenic
8 Waterway. This property (a portion of the Murtha Ranch) is in close proximity to
9 the Burres property. [The Department notes that the John Day Scenic Waterway
10 and the Arlington Wayside are protected areas under OAR 345-022-0040. The
11 status of the J.S. Burres State Park, managed by the BLM, needs to be clarified in
12 further consultation with OPRD. The applicant should discuss the “Murtha”
13 property because it is potentially a protected State Park.]

14 Jerry Sauter, Oregon Water Resources Department (email, 9/14/09):

- 15 • Water for construction must be obtained from a municipality or other source
16 under a limited license.
- 17 • A water right for irrigation may not be used for construction purposes.
- 18 • Any geotechnical hole or well installation work must be in compliance with ORS
19 537 and OAR Chapter 690, Divisions 200 through 240.

20 Rose Owens, Oregon Department of Fish and Wildlife (email and attached letter, 9/24/09):

- 21 • Include a discussion of how habitat categorization and vegetation classification
22 subsets for the project area were determined. Include a description of these
23 groupings.
- 24 • Micrositing corridors should be identified. [The Department notes that micrositing
25 areas should be based on areas that could be directly affected during construction,
26 allowing for needed flexibility in developing the final design configuration of the
27 facility and considering the desirability of establishing simplified boundaries that
28 can be easily described in writing. Areas that will not be affected under any
29 design scenario should be excluded to the extent practical. Proper habitat
30 categorization should be determined, in consultation with ODFW, for all areas
31 within the site boundary.]
- 32 • The applicant should avoid or minimize impacts to Strategy species and Strategy
33 habitats listed in the Oregon Conservation Strategy.
- 34 • The application should clarify the methods used in the Washington ground
35 squirrel (WGS) surveys. ODFW recommends a second survey in potential WGS
36 habitat prior to construction.
- 37 • Raptor nest surveys should be conducted within a 2-mile radius of the project
38 area. The applicant should map the location of inactive nests that have the
39 potential of use by raptor species of concern.
- 40 • ODFW recommends that construction not occur within a half-mile of active
41 raptor nests during the nesting season.

- 1 • The application should include a proposed Wildlife Monitoring and Mitigation
2 Plan including fatality monitoring of birds and bats. ODFW recommends raptor
3 nest monitoring for the life of the facility.
- 4 • The application should include a proposed Habitat Mitigation Plan that addresses
5 temporary and permanent losses of habitat as a result of construction. ODFW
6 recommends that a conservation easement be acquired with provisions for
7 enhancement, monitoring and management, as well as potential wildlife surveys
8 or research activities.
- 9 • ODFW requests clarification of mitigation for “collector or transmission lines”
10 placed within the “Shepherds Flat Wind Farm” (NOI, Exhibit J, p. 5).

11 Carla McLane, Morrow County (email, 9/25/09, and follow-up letter with attachments):

- 12 • The applicable substantive criteria were identified and copies of appropriate
13 ordinances and plans were attached. [Carla McLane sent a follow-up email to the
14 Department and the applicant on 10/14/09 that further specified applicable
15 ordinances and Comprehensive Plan policies.]
- 16 • County review would include avian, wildlife and habitat studies; analysis of
17 noxious and invasive weeds and a weed control plan; noise modeling and testing;
18 Traffic Impact Analysis (depending on the number of vehicle trips); and reviews
19 relative to flood and other hazards.

2. Public Comments

20 Glenn Harrison, Oregon-California Trails Association (letter, 9/10/09):

- 21 • The Oregon-California Trails Association (OCTA) is concerned about “Class 1”
22 ruts identified in the “Mapping Emigrant Trails” Manual. There are Class 1 rut
23 swales on the east side of Fourmile Canyon that will potentially be crossed by
24 three separate turbine strings (shown on map attached to the comment letter).
- 25 • OCTA recommends that the applicant do a full historic resources survey of the
26 Class 1 ruts with OCTA and Oregon Historic Trails Advisory Council experts
27 present to consult and identify the Oregon Trail traces.
- 28 • OCTA recommends that the applicant avoid placing facility components within
29 0.25 miles of “a contributing segment” of the Oregon Trail. [The Department
30 notes that the comment letter does not define “contributing segments” but the
31 letter states that the concern is avoidance of Class 1 ruts.]
- 32 • The applicant should minimize any impact to the historic viewshed from the
33 Oregon Trail.

34 Jerry Cordova, US Fish and Wildlife Service (email with attached letter, 9/25/09):

- 35 • The Service is primarily concerned about the potential for project specific
36 mortality to birds and bats and about measures to avoid, minimize or mitigate
37 project impacts to biological resources.

- 1 • The Service supports and encourages the use of the 2008 Oregon Columbia
2 Plateau Ecoregion Wind Energy Siting and Permitting Guidelines. [The
3 Department notes that the Guidelines have not been adopted by the Siting
4 Council. The Guidelines were written by an ad hoc committee of developers, state
5 and federal agencies, county planners, utilities and interest groups and were
6 developed as voluntary guidelines to inform new wind energy developers and to
7 provide a possible framework for developers to work within.]
- 8 • The Service requests copies of biological surveys and reports to assist in the
9 Service’s evaluation of project impacts.
- 10 • The Service would like to assist the applicant in the pre-project assessment,
11 monitoring, micrositing, post-project monitoring and mitigation phases of the
12 project to ensure identified wildlife and habitat impacts are addressed and
13 mitigated.
- 14 • The Service recommends complete surveys for birds, bats and other wildlife
15 species and their habitats, as outlined in the Guidelines (the comment letter
16 describes specific methods).
- 17 • The Service recommends that final project design incorporate the
18 recommendations outlined in the Guidelines.
- 19 • The Service recommends a 0.25-mile setback for turbine locations from any
20 ponds, streams and wetlands; avoidance of developing components within 0.5
21 miles of active eagle nests that have a line-of-site to the development and within
22 0.25 miles of active eagle nests that do not have a line-of-site; a 0.5-mile no-
23 construction setback for active raptor nests during the nesting season; and a 200-
24 foot construction buffer from any stream.
- 25 • The Service recommends that the certificate holder be required to develop a
26 Technical Advisory Committee (TAC) that would be responsible for reviewing
27 results of monitoring data and making suggestions to the Council and resource
28 agencies regarding the need to adjust mitigation and monitoring requirements.
29 [The Department notes that it has not consistently recommended that a TAC be
30 required for previous wind energy facilities. For the Leaning Juniper II Wind
31 Power Facility, the Council approved a Wildlife Monitoring and Mitigation Plan
32 that allowed the certificate holder to establish a TAC but did not require that the
33 certificate holder do so. The Council, however, required a TAC for the Golden
34 Hills Wind Project.]
- 35 • The Service recommends monitoring of known golden eagle “and other raptor”
36 nest sites within the project area (noting nest successes and failures) for the life of
37 the facility.
- 38 • The Service recommends implementation of the ODFW Habitat Mitigation Policy
39 as outlined in the Guidelines.

- 1 • The Service recommends the following measures be considered when developing
2 mitigation for the proposed facility:
 - 3 ○ Identify the expected life of the project and discuss the decommissioning
4 process.
 - 5 ○ Provide a mitigation ratio of 2:1 or higher for Category 2 and 3 shrub-
6 steppe habitat, springs, seeps and wetlands. Provide mitigation for all
7 other habitat at a compensatory ratio described in the ODFW Habitat
8 Mitigation Policy.
 - 9 ○ “Collaboratively develop” a management and monitoring plan for the
10 mitigation area for the life of the facility with a “dedicated, non-wasting,
11 interest-bearing funding source” and describe how and where restoration
12 at the mitigation site will occur. [The Department notes that the Council
13 has never required a “dedicated funding source” to ensure management of
14 a mitigation area. Instead, the obligation to manage the mitigation area is
15 incorporated in site certificate conditions, which are enforceable through
16 the Council’s statutory authority and OAR Chapter 345, Division 29.]
 - 17 ○ Use turbine cut-in speeds of 5.0 m/s or 6.5 m/s for each turbine, based on
18 evidence (Arnett *et al.*, 2009) that this would “significantly” reduce bat
19 mortality “with marginal annual power loss.”
- 20 • Most Oregon songbirds, wading bird, waterfowl and birds of prey are protected
21 under either the Migratory Bird Treaty Act or the Bald and Golden Eagle
22 Protection Act. The Service therefore recommends the “above iterative wind
23 project planning, development, and operational steps, as proactive project actions
24 to address potentially negative wind energy development impacts to migratory
25 birds and their habitats.”
- 26 • The applicant should summarize existing available data on wildlife impacts
27 associated with existing wind projects “proximal to the proposed Project.” The
28 applicant should prepare a Cumulative Impacts Report, including “habitat,
29 displacement and mortality data, and an estimation of how the new proposed wind
30 project may affect those existing impacts.” The applicant should “collaboratively
31 create” a report focusing on key species (for example, ferruginous hawk) and
32 including “status, trends and ‘impact thresholds of concern’ for a limited number
33 of key species that are highly sensitive to additional mortality, and species highly
34 sensitive to habitat loss or displacement.”

VIII. EXPIRATION

35 OAR 345-020-0060 provides that an NOI expires two years after the date the applicant
36 submits the NOI to the Department. Accordingly, the NOI submitted by Saddle Butte Wind LLC
37 will expire on August 7, 2011, unless the applicant submits a timely petition to extend the
38 expiration date. If the applicant does not submit a Preliminary Application for a site certificate
39 before the expiration of the NOI or any extension period granted by the Council, the applicant
40 must submit a new NOI to satisfy ORS 469.330.

IX. AMENDMENT AND COMPLETENESS

1 The Council or the Department may amend this project order at any time (ORS
2 469.330(4)). Amendment may include changes to the analysis areas. To issue a site certificate,
3 the Council must determine that the proposed facility complies with the Oregon statutes and
4 administrative rules that this project order identifies as applicable (ORS 469.503(3)).

5 Under OAR 345-015-0190(5), when the Department determines the application contains
6 adequate information for the Council to make findings on all applicable Council standards, the
7 Department may determine the application complete, whether or not the application contains all
8 information required under OAR 345-021-0000 and OAR 345-021-0010. After a determination
9 that an application is complete, the Department may require the applicant to submit additional
10 information if the Department identifies a need for that information during its review of the
11 application. OAR 345-015-0190(9).

X. APPLICABILITY

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

OREGON DEPARTMENT OF ENERGY

Thomas M. Stoops, Siting Manager
Oregon Department of Energy

Date of Issuance: October 20, 2009