EXHIBIT K

LAND USE

OAR 345-021-0010(1)(k)

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K.1 INTRODUCTION AND LAND USE REVIEW PATH

**OAR 345-021-0010(1)(k) Information about the proposed facility’s compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council’s land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, “affected local government” means a local government that has land use jurisdiction over any part of the proposed site of the facility.**

**Response:** To issue a site certificate, the Energy Facility Siting Council (Council) must find that the Brush Canyon Wind Power Facility (Facility) complies with Oregon’s Statewide Planning Goals adopted by the Land Conservation and Development Commission (LCDC). See Oregon Administrative Rule (OAR) 345-022-0030(1). EC&R Development, LLC (Applicant) has elected to seek a Council determination of compliance under ORS 469.504(1)(b). Under this election, the Application for Site Certificate (ASC) complies with the Council’s land use standard if the Council determines:

- **ORS 469.504(1)(b)(A)** The facility complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

- **ORS 469.504(1)(b)(B)** For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

- **ORS 469.504(1)(b)(C)** For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with all applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

**Response:** Exhibit K demonstrates that the Facility complies with the majority of the local substantive criteria from the applicable comprehensive plans and zoning codes for the jurisdictions in which the Facility is located. Where the Facility cannot comply with an applicable criterion, the Facility is nonetheless authorized because it otherwise complies with the applicable statewide planning goals under ORS 469.504(1)(b)(B).

K.2 OVERVIEW OF FACILITY, PERMITTING APPROACH, AND APPLICABLE LOCAL CRITERIA

K.2.1 Facility Overview and Permitting Approach

As explained in Exhibit B, the Applicant proposes to construct and operate a wind energy generation facility with up to 223 wind turbine generators. Related or supporting facilities consist of the 34.5-kilovolt (kV) power collector lines, two Facility collector substations, a 230-kV transmission line and interconnection substation, communication systems, an operations and maintenance (O&M) building, meteorological (met) towers, access roads, and additional construction areas such as staging areas and two batch plants.
The Facility is located on land within the land use jurisdictions of Sherman and Wasco counties. In order to comply with the Council’s land use standard, the Applicant must demonstrate compliance with both state law and the applicable criteria from the local governments’ comprehensive plans and land use codes.\(^1\)

As described in Exhibit B, the Applicant is proposing a new 32-mile overhead, 230-kV transmission line. The 230-kV transmission line corridor will extend for approximately 12 miles from the southern Facility collector substation to the northern Facility collector substation, and continue for 20 miles from the northern collector substation to the existing Bonneville Power Administration (BPA) 500-kV transmission line at the Buckley substation, which BPA proposes to rebuild. The transmission line corridor spans 75 feet on either side of centerline, resulting in a total corridor of approximately 590 acres within the overall site boundary acreage of 76,072 acres. Of the 32-mile length, approximately 8 miles of the 230-kV transmission line are proposed in Sherman County and 24 miles are proposed in Wasco County.

**K.2.1.1 Sherman County**

Consistent with previously approved Council projects in Sherman County,\(^2\) the portion of the Facility in Sherman County is assessed as four separate land uses under the Sherman County Zoning, Subdivision, Partitioning, and Land Development Ordinance (SCZO):

- **Commercial Utility Facility** (consisting of wind turbines, electrical collection system, collector substations, met towers, and O&M building)
- **Transportation Improvements** (consisting of new access roads)
- **Utility Facility Necessary for Public Service** (consisting of the 230-kV transmission line)
- **Reconstruction or Maintenance of Public Roads** (consisting of reconstruction or normal maintenance/repair of existing transportation facilities)

Where the SCZO does not fully implement state law, the statutes, goals, and rules directly applicable to the Facility are discussed. See Section K.5.1. Specifically, Sherman County still requires some level of discretionary, conditional land use review for “utility facilities necessary for public service” on land zoned for Exclusive Farm Use (EFU), even though Oregon law provides that “utility facilities necessary for public service” are permitted outright in EFU zones, subject only to ORS 215.275 and ORS 215.283(1). Because the uses listed in ORS 215.283(1), including transmission lines, must be reviewed exclusively under the provisions of that statute as uses permitted outright,\(^3\) the Facility’s direct compliance with ORS 215.283 and 215.275 is discussed in Section K.5.1.4.

In addition, the SCZO and SCCP are not consistent with recently updated administrative rules governing conditional uses on EFU land. For the portion of the Facility in Sherman County, these amended rules, set forth at OAR 660-033-0130(37), apply directly to the Facility under ORS 197.646 pursuant to ORS 469.504(1)(b)(A). The Facility’s compliance with these standards is discussed in Section K.5.1.4.

Finally, because the Facility does not comply with all of the applicable substantive criteria for Sherman County, the Facility’s direct compliance with the applicable statewide planning goals under ORS 469.504(1)(b)(B) is discussed. See Section K.5.1.4.

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\(^1\) The Applicant may satisfy the Council’s land use standard by complying with applicable local criteria, by seeking a Council determination of compliance with directly applicable statewide land use planning goals, or through the goal exception process.

\(^2\) See Golden Hills Final Order at 40-41 (May 15, 2009).

\(^3\) Brentmar v. Jackson County, 321 Or 481, 496 (1995).
K.2.1.2 Wasco County

Consistent with previously approved Council projects in Wasco County, the portion of the Facility in Wasco County is assessed as three separate land uses under the Wasco County Land Use and Development Ordinance (WCLUDO):

- Commercial Utility Facility (consisting of wind turbines, electrical collection system, collector substations, met tower, O&M building, and new and improved access roads)
- Transportation Improvements (consisting of improvements to existing public roads)
- Utility Facility Necessary for Public Service (consisting of the 230-kV transmission line)

The WCLUDO was recently amended to fully implement Oregon’s land use laws; therefore, the Facility is reviewed under the applicable WCLUDO. There are no statutes or administrative rules that are directly applicable to the portion of the Facility in Wasco County.

K.2.2 Applicable Local Criteria

In November 2011, the Wasco County Planning Department identified land use criteria then in effect that would be applicable to the Facility. The criteria identified by Wasco County are listed below. Sherman County did not identify the applicable land use criteria, but the Council has previously found that the SCZO criteria listed below apply to wind facilities located in Sherman County’s EFU zone. See Golden Hills Wind Project Final Order at 31 and 49, Klondike III Wind Project Final Order at 22; and Biglow Canyon Wind Farm Final Order at 32.

The applicable local substantive criteria for Sherman and Wasco counties are as follows:

**Sherman County Zoning, Subdivision, Partitioning, and Land Development Ordinance (SCZO) (Sherman County, 2003)**

Article 3 – Use Zones

- Section 3.1 – Exclusive Farm Use Zone
- Section 3.1(4)(c) – Dimensional Standards/Setback Requirements

Article 4 – Supplementary Provisions

- Section 4.9 – Compliance with and Consideration of State and Federal Agency Rules and Regulations
- Section 4.13 – Additional Conditions to Development Proposals

Article 5 – Conditional Uses

- Section 5.2 – General Criteria
- Section 5.3 – General Conditions
- Section 5.8 – Standards Governing Specific Conditional Uses

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4 See, e.g., Summit Ridge Final Order at 26-27.
5 The WCLUDO criteria listed are consistent with the WCLUDO criteria addressed in previous applications. See Summit Ridge Final Order at 25.
Article 11 – Design and Improvement Standards and Requirements

- Section 11.1 – Compliance Required
- Section 11.2 – Zoning or Other Land Development Permit or Approval
- Section 11.8 – Streets and Other Public Facilities
- Section 11.10 – Completion or Assurance of Improvements
- Section 11.11 – Untitled.

_Sherman County Comprehensive Land Use Plan (SCCP) (Sherman County, 2007)_

Section VIII – Planning Process and Citizen Involvement

Section XI – Physical Characteristics

Section XII – Social Characteristics

Section XIV – Economics

Section XV – Energy

Section XVI – Land Use

Section XVII – Comprehensive Land Use Plan Map

_Wasco County Land Use and Development Ordinance (WCLUDO) (Wasco County, as amended April 2012)_

Chapter 1 – Introductory Provisions

- Section 1.030 – Severability/Legal Parcel Determination
- Section 1.090 – Definitions for Parcel and Structure

Chapter 3 – Basic Provisions

- Section 3.210 – Exclusive Farm Use Zone
- Section 3.700 – Environmental Protection District
- Section 3.750 – Division 2 – Geologic Hazards Overlay
- Section 3.800 – Division 5 – Mineral and Aggregate Overlay
- Section 3.960 – Division 12 – Sensitive Bird Site Overlay

Chapter 4 – Supplemental Provisions

- Section 4.070 – General Exceptions to Building Height Requirements
- Section 4.140 – Traffic Impact Analysis (TIA)

Chapter 5 – Conditional Use Review

- Section 5.020 – Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used
• Section 5.030 – Conditions
• Section 5.040 – Revocation of Conditional Use Permit

Chapter 10 – Fire Safety Standards

Chapter 19 – Standards for Energy Facilities and Commercial Energy Facilities
• Section 19.010 – Classification of Energy Facilities
• Section 19.030 – Standards for Approval
• Section 19.040 – Additional Approval Standards for Energy Facilities and Commercial Energy Facilities
• Section 19.050 – Conditions of Approval

Wasco County Comprehensive Plan (Wasco County, 2010)

Goal #1 – Citizen Involvement

Goal #2 – Land Use Planning

Goal #3 – Agricultural Lands

Goal #5 – Open Spaces, Scenic and Historic Area, and Natural Resources

Goal #6 – Air, Water, and Land Resources Quality

Goal #7 – Areas Subject to Natural Disasters and Hazards

Goal #8 – Recreational Needs

Goal #9 – Economy of the State

Goal #11 – Public Facilities and Services

Goal #12 – Transportation

Goal #13 – Energy Conservation

State Standards

Oregon Revised Statutes
• 215.275 – Utility Facilities
• 215.283 – Exclusive Farm Use

Oregon Administrative Rules
• 660-033-0130(37) – Wind Power Generation Facility

K.3 LAND USE ANALYSIS AREA AND MAP

OAR 345-021-0010(1)(k)(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area.
**Response**: The analysis area consists of the site boundary and the area within one-half mile of the site boundary. The following maps are provided:

- Figure K-1 is an aerial photograph showing the proposed Facility location and 223-turbine layout in Sherman and Wasco counties.
- Figure K-2 shows the Sherman and Wasco county zoning within the half-mile analysis area.
- Figures K-3a through K-3e show the Sherman and Wasco county land use zones within the half-mile analysis area.
- Figures K-4a through K-4e show the Sherman and Wasco county land capability classifications within the half-mile analysis area.
- Figure K-5 shows mineral resources in Sherman County.
- Figure K-6 shows historic resources in Sherman County.

As shown on Figure K-2, all land within the analysis area in Sherman County has a Comprehensive Plan designation of Cropland, and all land within the analysis area in Wasco County has a Comprehensive Plan Designation of Exclusive Farm Use.

### K.4 LOCAL LAND USE APPROVAL

**OAR 345-021-0010(1)(k)(B)** *If the applicant elects to obtain local land use approvals:*

(i) **Identify the affected local government(s) from which land use approvals will be sought.**

(ii) **Describe the land use approvals required in order to satisfy the Council's land use standard.**

(iii) **Describe the status of applicant's application for each land use approval.**

(iv) **Provide an estimate of time for issuance of local land use approvals.**

**Response**: OAR 345-021-0010(1)(k)(B) is not applicable. The Applicant has elected to obtain a Council determination on land use.

### K.5 COUNCIL DETERMINATION ON LAND USE

**OAR 345-021-0010(1)(k)(C)** *If the applicant elects to obtain a Council determination on land use:*

(i) **Identify the affected local government(s).**

**Response**: The Facility will be sited in Sherman and Wasco counties, which are the affected local governments.

(ii) **Identify the applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria.**

**Response**: The proposed Facility and all related or supporting facilities will be located in Sherman County’s EFU (F-1) Zone and Wasco County’s EFU (A-1) Zone (see Figure K-2). In addition, the Facility will be located in Sherman County’s Natural Hazards Combining Zone (NH) and Wasco County’s Geologic...
Hazards Overlay (EPD-2) Zone, Mineral and Aggregate Overlay (EPD-5) Zone, and Sensitive Bird Site Overlay (EPD-12) Zone.

K.5.1 Sherman County

K.5.1.1 Land Uses

As noted in Section K.2.1.1 and consistent with the Council’s past decisions,6 the portion of the Facility in Sherman County is assessed as four separate land uses:

- Commercial Utility Facility (consisting of wind turbines, electrical collection system, collector substations, met towers, and O&M building)
- Transportation Improvements (consisting of new access roads)
- Utility Facility Necessary for Public Service (consisting of the 230-kV transmission line)
- Reconstruction or Maintenance of Public Roads (consisting of reconstruction or normal maintenance/repair of existing transportation facilities)

**Commercial Utility Facility**—SCZO Section 3.1.3 lists uses “and their accessory uses” conditionally permitted in the F-1 zone. Subsection 3.1.3(q) conditionally allows “operations conducted for” “commercial utility facilities.” As explained below, the proposed wind turbines, power collection system, aboveground transmission line, collector substations, met towers, and the O&M building meet the definition of a “commercial utility facility.”

**Transportation Improvements**—New and improved access roads are separately allowed as conditional uses under SCZO 3.1.3(gg).

**Utility Facility Necessary for Public Service**—SCZO Section 3.1.3(q) appears to be modeled on ORS 215.283(2)(g). However, the definition of “utility facility” in SCZO Section 1.4.136 is overbroad and includes some utility facilities, such as transmission lines, that are permitted outright under ORS 215.283(1)(c), subject to compliance with ORS 215.275. Given the lack of any Sherman County code provisions implementing the statute allowing outright “utility facilities necessary for public service” on EFU-zoned lands and consistent with previously-approved Council projects, the Facility’s direct compliance with ORS 215.283(1) and ORS 215.275 is discussed in Section K.5.1.4 below.

**Reconstruction or Maintenance of Public Roads**—SCZO Sections 3.1.2(g), (x) allow outright the “reconstruction or modification of public roads” and the “normal maintenance and repair” of existing transportation facilities.

SCZO Article 5 is only applicable to those uses (Commercial Utility Facility and Transportation Improvements) that are allowed as conditional uses under the SCZO. The balance of the SCZO criteria, as well as the applicable substantive provisions from the SCCP, apply to the Facility as a whole.

K.5.1.2 Applicable Substantive Criteria from the SCZO

**Article 3. Use Zones**
**SCZO Section 3.1 – Exclusive Farm Use Zone, F-1 Zone**

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

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

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

(x) Transportation improvements.

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

**Section 3.1(3). Conditional Uses Permitted** - In an F-1 Zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements of Article 5 of this Ordinance and this Section:

(g) Commercial utility facilities.

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

  1) Construction, reconstruction, or widening of highways, roads, bridges or other transportation projects that are: (1) not improvements designated in the Transportation System Plan; or (2 not designed and constructed as part of a subdivision or planned development subject to site plan and/or conditional use review. Transportation projects shall comply with the Transportation System Plan and applicable standards, and shall address the following criteria. For State projects that require an Environmental Impact Statement (EIS) or Environmental Assessment (EA), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:

A. The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.

B. The project is designed to minimize unavoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.

C. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.

D. The project includes provision for bicycle and pedestrian circulation as consistent with the comprehensive plan and other requirements of this ordinance.

**Response:** SCZO 3.1.2 provides that reconstruction and modification of public roads and highways and the normal maintenance and repair of existing transportation facilities are allowed outright in Sherman County’s F-1 zone, and SCZO 3.1.3 provides that “commercial utility facilities” and “transportation improvements” are allowable on F-1-zoned land as conditional uses. The response to SCZO Section 5.2.2 discusses these uses in detail.
SCZO 3.1(4)(c)—Dimensional Standards/Setback Requirements

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

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

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

Response: Sherman County Ordinance 39-2007, located in Attachment K-1 to this Exhibit, increases the setback requirements for wind turbines from the outside property lines of the site boundary. The Ordinance outlines the following setback distances:

Section 4. Setback Distances

a. Setback from property lines in all East-West upwind and downwind directional property line installation shall be no less than 7.5 times the rotor diameter and no less than 1.5 times the rotor diameter for all North-South property line delineations. These requirements shall only apply to project boundaries and will not be required for towers installed internally within the project.

As proposed, the locations of most of the turbines will conform to the Ordinance 39-2007 setback requirements. However, some of the proposed turbines may not meet these setback standards.7

Sherman County Ordinance No. 39-2007 is not a standard adopted to satisfy Goal 3 or any other Statewide Planning Goal. The “Purpose” section of Ordinance No. 39-2007 indicates the County’s intention to “encourage collaboration and cooperation between neighboring property owners and project developers to establish appropriate set back requirements between neighboring [wind energy] projects.” The purpose is further described to apply the ordinance where “adjacent, separate wind projects cannot agree on setback requirements for wind towers of their respective projects.” The Ordinance purports to impose setbacks only when wind energy developers “cannot agree on setback requirements.” Therefore the “setback distances” in Section 4 appear to apply only when there is no agreement. Notwithstanding this intent, the Section 4 “setback distances” appear to be mandatory requirements, creating substantial ambiguity in the application of the Ordinance. The setback requirements in Ordinance No. 39-2007 are not “required” by Statewide Planning Goal 3 or any other statewide goal. ORS 469.504(1)(b)(A).

For the Facility, there is no known disagreement with any adjacent wind energy project, developer, or property owners with ambitions to develop wind energy facilities. Consequently, based on the Ordinance’s own terms, the setback requirements are inapplicable to the Facility. Further, Ordinance No. 39-2007 was not adopted to further the objectives of Goal 3—it was adopted to regulate the economic enterprise of wind energy facility developers, apparently to avoid conflicts arising from interference with the energy generation potential vis-a-vis adjacent projects (that is, apparently to avoid diminution in wind generation potential due to wake effect or other interference with wind energy resources). The ordinance is therefore not “applicable” under the terms of the ORS 469.504(1)(b)(A).

Assuming, in the alternative, that Ordinance No. 39-2007 is an “applicable substantive criteria,” the Council can make a finding that the Facility is unable to comply with “one or more of the applicable...
substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goals and any land use statues directly applicable to the facility under ORS 197.646(3).” ORS 469.504(1)(b)(B). The Facility complies with Statewide Planning Goal 3, and all Sherman County land use plans and ordinances adopted by Sherman County to satisfy Goal 3. The following sections of this Exhibit K document how the Facility complies with all other applicable, locally adopted and acknowledged comprehensive plan goals, policies and ordinances, including those required for compliance with Goal 3, as well as applicable statewide standards, including OAR 660-033-0130(37): pages K-8 through K-32; Section K.5.1.2.

Statewide Goal 13 is the only other potentially applicable statewide planning goal at issue in evaluating the criteria of ORS 469.504(1)(b)(B). Goal 13 provides that “[l]and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.” Goal 13 guidelines specifically promote the use of renewable energy resources, including wind energy. Sherman County’s turbine setback requirements do not provide an energy efficiency benefit for properties that are not downwind of the Facility; it is possible that the setback could actually reduce energy efficiency by preventing placement of turbines for maximum efficiency, based on unproven and unnecessary setback requirements. Moreover, as the ordinance appears to be drafted only for circumstances where a conflict exists between adjacent property owners or developers, the imposition of setbacks in the absence of such conflicts has the effect of significantly diminishing the energy production of the Facility. Consequently, the setback would actually reduce energy efficiency and restrict the development of renewable energy resources by preventing turbine locations designed for maximum efficiency, under an unproven theory that a non-existing adjacent wind generation facility could be theoretically impaired in its efficiency by virtue of the Facility.

Sherman County’s Comprehensive Plan addresses Goal 13 as follows: “Cooperate with public agencies and private individuals in the use and development of renewable resources.” (Ex. K, at K-25). This policy is not directed at the applicant, but instead instructs the County in its policy development, conduct, and legislation.

Under ORS 469.504(1)(b)(B) and consistent with past Council decisions, if a facility does not meet the applicable substantive criteria, the Council may nevertheless approve the facility if it complies with applicable statewide planning goals. Although the provisions of SCZO 3.1, including the setback criteria, have been acknowledged by LCDC to comply with the statewide planning goals, the setback criteria are not required by any statewide planning goal. Locating turbines within the applicable setback will not increase (or decrease) impacts to agricultural lands.

Because the Facility satisfies the OAR 660-033-0130(37) criteria as discussed in Section K.5.1.4, it is also consistent with Goal 3. Stated differently, the applicable setback requirement is not needed in order to satisfy Goal 3, nor does it affect the impact of the proposed Facility on agricultural lands. Thus, although the Facility does not comply with the Sherman County setback requirements, the Facility “otherwise [complies] with the applicable statewide planning goals” under ORS 469.504(1)(b)(B).

SCZO Section 3.7 – Natural Hazards Combining Zone (NH)

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

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8 See Golden Hills Final Order at 42 and 58-73.
9 See e.g., Summit Ridge Final Order at 52.
Section 3.7(1). Purpose - The purpose of the (NH) Combining Zone is to promote and protect the public health, safety and general welfare and to minimize potential losses by providing guidelines for development in hazard areas. Development limitations are applicable to developments in areas of surface water accumulations and high groundwater, unstable or fragile soils, geological hazards, and steep slopes, generally those of 30 percent or greater.

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

Response: As proposed, most of the turbines will be sited outside Sherman County’s NH zone. However, roughly four turbines will be sited within the NH zone and therefore, consistent with previous Council decisions,10 SCZO 3.7.3 applies. Because the Facility complies with the SCZO conditional use standards and supplemental development standards, as shown in the discussion of SCZO 5.2 and 3.1, this criterion is also met.

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

Response: Consistent with previous Council decisions,11 this criterion is met because, as discussed in Exhibit H (Section H.6), Applicant will conduct an appropriate site-specific geotechnical evaluation before construction to identify and avoid geological hazards.

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

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

Response: The Application evaluates all land within the Facility site boundary and provides the necessary information to comply with the listed NH zone standards. As noted above and discussed in Exhibit H (Section H.6), the Applicant will conduct an appropriate site-specific geotechnical evaluation before construction to identify and avoid geological hazards.

(b) Background Data in Report. At a minimum, the Site Investigation Report shall contain the following background information:
1) A general analysis of the affected site and general area’s topography and geology, including faults, folds, geologic and engineering geologic units, and any soils, rock and structural details important to the engineering or geological interpretations and the their relative activity.

2) Location and approximate depths of seasonal surface water accumulations and groundwater tables, and location and direction of all watercourses, including intermittent flows.

3) A history of soil and water related problems on the site and adjacent lands, which may be derived from discussions with local residents and officials and the study of old photographs, reports and newspaper files.

4) The extent of the surface soil formation and its relationship to the vegetation of the site, the activity of the landform, and the locations on the site and surrounding areas.

5) The following ground photographs of the site and surrounding areas with information showing the scale and date of photographs and their relationship to the topographic map and profiles:
   A. A view of the general area.
   B. The site of the proposed development.
   C. Any features which are important to the interpretation of the hazard potential of the site, including all sites of erosion, surface or groundwater accumulations, or accretion.

Response: With the exception of site-specific photographs, the information required in the report is found in Exhibits J and H of the Application (Sections H.5, H.6, H.10 and H.11). The Council has previously determined that site-specific photographs are not required.

(c) Topography Map. A topography base map at a scale of not more than 1:100 with a contour interval of 2 feet shall be prepared identifying the following features and accompanied by references to the source(s) and date(s) of information used.

1) Position of lot lines.

2) Boundaries of the property.

3) Each geological feature classification type.

4) Areas of open ground and the boundaries and species identification of major plant communities.

5) Any springs, streams, marshy areas, standing bodies of water, intermittent waterways, drainage ways, and high groundwater areas with highest annual levels.

6) Cut terraces, erosion scarps, and areas exhibiting significant surface erosion due to improper drainage and runoff concentration.

12 Golden Hills Final Order at 46.
7) Geological information, including lithologic and structural details important to engineering and geologic interpretations.

**Response:** In previous Council decisions, the Council concluded that, because of the large size of the proposed facility, a topography map at 1:100 with a contour interval of 2 feet was not required. Consistent with those decisions, the Application provides the features required by (c) at a feasible scale. Exhibit F (Figure F-1) identifies lot lines within the Facility site boundary. Exhibit H (Figures H-1 through H-5) provides detailed site and geology maps, and Exhibit J (Figures J-1 and J-2a through J-2m) identifies waterbodies.

(d) Subsurface Analysis. If upon initial investigation it appears there are critical areas where the establishment of geologic conditions at specific depths is required, a subsurface analysis obtained by drilling holes, well logs, and other geophysical techniques shall be conducted, or caused to be conducted by a qualified expert, by the person responsible for the site, and investigation report to include the following data as appropriate.

1) The lithology and compaction of all subsurface horizons to bedrock.

2) The depth, width, slope and bearing of all horizons containing significant amounts of silt and clay and any other subsurface layers which could reduce the infiltration of surface waters.

**Response:** A detailed geotechnical investigation will be conducted prior to the start of construction for the Facility, including those components within the NH zone. If required, this investigation will include exploratory test drilling and key locations where site improvements are proposed.

(e) Development Proposal. The site investigation report shall include the following information on the proposed development as applicable:

1) Plans and profiles showing the position and height of each structure, paved areas, and areas where cut and fill is required for construction.

2) The percent and location of the surface of the site, which will be covered by impermeable surfaces.

3) A stabilization program for the development describing:

   A. How much of the site will be exposed during construction and what measures will be taken to reduce erosion and soil movement during construction.

   B. A revegetation plan designed to return open soil areas, both preexisting and newly created, to a stable condition as soon as possible following construction and the period of time during which revegetated areas will receive revegetation maintenance.

   C. Areas to be protected from vegetation loss or ground water pollution shall be identified and means for protection described.

**Response:** Exact locations of turbines and collector facilities have not been determined; therefore, plan and profile drawings have not yet been completed. However, prior to the start of construction, the Applicant will submit for Sherman County Planning Department concurrence the plans and profiles required by SCZO 3.7.5(e). Areas affected during construction will be revegetated after construction is

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13 Id.
completed. As described in Exhibit I (Section I.5), the Applicant will implement measures to decrease soil exposure during Facility construction. Construction will be conducted pursuant to an NPDES 1200-C permit issued by the Oregon Department of Environmental Quality (DEQ). The NPDES permit will require the use of best management practices to minimize the potential for erosion. Areas affected during construction will be revegetated after construction is complete.

(f) Conclusions in the Site Investigation:

1) The site investigation report shall contain conclusions stating the following:
   A. How the intended use of the land is compatible with the natural conditions; and
   B. Any existing or potential hazards noted during the investigation.

2) Mitigating recommendations for specific areas of concern shall be included.

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

Response: These conclusions are discussed in detail in Exhibit H (Sections H.10 through H.14).

Section 3.7(6). Standards for Building Construction in NH Zone

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

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

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

Response: SCZO 1.4.20 defines “building” as “[a] structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.” No buildings are proposed within the NH zone, so these standards do not apply.

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

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

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

Response: No access routes are proposed within the NH zone, so these standards do not apply.
Article 4. Supplementary Provisions

SCZO 4.9—Compliance with and Consideration of State and Federal Agency Rules and Regulations

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

Response: The Council’s rules are designed to identify all applicable permits, approvals, and regulations. In particular, Exhibit E identifies all of the federal, state, and local permits and approvals needed to construct the Facility. Exhibit E provides evidence demonstrating that the construction and operation of the Facility will comply with all state and local statutes, rules, and standards. Exhibit E also provides evidence that for federal permits, the relevant federal agencies have received or will receive the information needed to authorize the Facility.

SCZO 4.13 Additional Conditions to Development Proposals

The County may require additional conditions for development proposals.

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

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

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

4. Construction of improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or roads that serve the proposed use where necessary to mitigate the impacts to the existing transportation system caused by the proposed use.

Response: The Facility will comply with all conditions of approval imposed by the Council. This application addresses the transportation and access provisions under the applicable review criteria set forth below. The Facility will not reduce the level of service for the public transportation system below a D rating, or generate a volume-to-capacity (V/C) rating of 0.75 or greater. A temporary growth in average daily traffic (ADT) will occur during construction, but all roads indicated for possible construction traffic have adequate capacity for the temporary increase in trips. Likewise, there will be no effect on ADT during operations because the Applicant estimates a maximum of an additional 50 trips per day from Facility operations. All state highways noted for construction traffic, as outlined in Exhibit U, are designed to accommodate loads of up to 80,000 pounds. The Applicant will seek authorization for any loads related to Facility construction that exceed 80,000 pounds. The Applicant will also inspect all roads before construction to determine any special requirements and determine a baseline for potential road improvements post-construction. It is not necessary for the Facility to dedicate any land for transportation facilities, nor for the Applicant to undertake any road mitigation improvements other than the reconstruction of existing public roads post-construction.
Article 5. Conditional Uses¹⁴

SCZO 5.2 General Criteria

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

1. The proposal is compatible with the applicable provisions of the County Comprehensive Plan and applicable Policies.

Response: As detailed in Section K.7.2, the proposal is compatible with the applicable provisions of the Sherman County Comprehensive Plan.

2. The proposal is in compliance with the requirements set forth by the applicable primary Zone, by any other applicable combining zone, and other provisions of this Ordinance that are determined applicable to the subject use.

Response: The portion of the Facility in Sherman County is located entirely within the EFU zone, which is designated F-1 under SCZO 3.1. Four separate land uses are assessed for this land. As noted above, SCZO Article 5 is only applicable to those uses (Commercial Utility Facility and Transportation Improvements) that are allowed as conditional uses under the SCZO. The balance of the SCZO criteria, as well as the applicable substantive provisions from the SCCP, apply to the Facility as a whole.

Commercial Utility Facility. SCZO Section 3.1.3 lists uses “and their accessory uses” conditionally permitted in the F-1 zone. Subsection 3.1.3(e)(17) conditionally allows “operations conducted for” “commercial utility facilities.” SCZO Section 1.4.136 defines a “utility facility” to include “any major structure owned or operated by a private electric company for the generation, transmission, distribution or processing of its products but excluding local power distribution lines, and similar minor facilities.” SCZO Section 1.4.5 defines “[a]ccessory use or structure” as “[a] use or structure, or a portion of a structure, the use of which is incidental and subordinate to the main use of the property or structure and located on the same premises as the main or primary use and/or structure.” Thus, the proposed wind turbines and met towers, power collection system, aboveground transmission lines, collector substations, and the O&M building are structures that meet the definition of a “utility facility” and are therefore subject to the conditional use criteria set forth in this section.

Utility Facility Necessary for Public Service. SCZO Section 3.1.3(e)(17) appears to be modeled on ORS 215.283(2)(g), which conditionally allows “commercial utility facilities for the purpose of generating power for public use by sale.” However, the definition of “utility facility” in SCZO Section 1.4.136 is overbroad and includes some utility facilities, such as transmission lines, that are permitted outright under ORS 215.283(1)(c), subject to compliance with ORS 215.275. Thus, under SCZO Section 3.1.3, some uses that are allowed outright under state law are improperly subjected to additional conditions under SCZO Section 3.1.3. Because Sherman County cannot narrow the application of uses permitted in ORS 215.283(1), transmission lines, which are “utility facilities necessary for public service” are allowed outright, subject to compliance with ORS 215.275 and are not subject to the conditional use criteria set forth in this section. Given the lack of any Sherman County code provisions implementing the statute, the Facility’s compliance with ORS 215.283(1) and ORS 215.275 is discussed in Section K.5.1.4 below.

Reconstruction or Maintenance of Public Roads. SCZO Section 3.1.2 lists uses permitted outright in the F-1 zone, Subsection (g) allows “reconstruction or modification of public roads” and subsection (x) allows

¹⁴ SCZO Article 5 is only applicable to those uses (Commercial Utility Facility and Transportation Improvements) that are allowed as conditional uses under the SCZO.
for normal repair and maintenance of existing transportation facilities. The proposed Facility would include improvement of certain segments of public roads to support the weight of vehicles and turbine components. These improvements are allowed outright.  

**Transportation Improvements.** The proposed access roads are “transportation improvements” that are separately allowed as conditional uses under SCZO Section 3.1.3(gg) and are therefore subject to the conditional use criteria set forth in this section.

“Transportation improvements” are subject to four requirements (in addition to other applicable requirements). The proposed access roads comply with the four requirements set forth at 3.1.3(f)(1). Subsection (1)(A) requires that a facility be designed to be compatible with existing land use and social patterns, including noise generation, safety and zoning. The access roads will be compatible with existing land use patterns. The proposed Facility, including the access roads, will be compatible with farm uses. Indeed, the private access roads will provide improved access by land managers and farmers to their fields. Subsection (1)(B) requires that a facility be designed to minimize unavoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities. As discussed in Exhibits I (Section I.5), J (Section J.8.1), P (Section P.8.3), Q (Section Q.4.2.3), R (Section R.4.1), S (Section S.7.3), T (Section T.3.3), and U (Sections U.3.3.1 and U.4.2), the new access roads will minimize unavoidable environmental impacts to these resources. Subsection 1(C) requires that a facility “preserve or improve the safety and function of the facility through access management, traffic calming, or other design features.” General usage of public roads intersecting the proposed access roads is low, and the trips will not have a significant impact on traffic. Accordingly, the access roads will preserve the safety and function of the public road system without the need for access management, traffic calming, or other design features. Subsection 1(D) requires that the facility “include provision for bicycle and pedestrian circulation.” This provision is not applicable to the proposed Facility. There are no other provisions of the SCCP or SCZO that would require bicycle and pedestrian facilities for the proposed Facility.

3. **That, for a proposal requiring approval or permits from other local, state, and/or federal agencies, evidence of such approval or permit compliance is established or can be assured prior to final approval.**

**Response:** Exhibit E identifies all local, state, and federal permits needed for construction and operation of the proposed Facility. The Applicant will secure all necessary permits.

4. **The proposal is in compliance with specific standards, conditions, and limitations set forth for the subject use in this Article and other specific relative standards required by this or other County Ordinance.**

**Response:** The substantive criteria contained in Article 5 of the SCZO are discussed in response to Sections 5.2 and 5.8 (above and below). The applicable substantive criteria contained in other Articles of the SCZO are discussed in response to Section 5.2.2 (below).

5. **That no approval be granted for any use which is or is expected to be found to exceed resource or public facility carrying capacities, or for any use which is found to not be in compliance with air, water, land, and solid waste or noise pollution standards.**

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15 Section 3.1.2, which lists permitted uses in the F-1 zone, is not entirely consistent with ORS 215.283(1). ORS 215.283(1) lists uses that are permitted under state law and includes “reconstruction * * * of public roads, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way * * *” (Asterisked emphasis added.) Although SCZO Section 3.1.2 contains the introductory language for ORS 215.283(1)(i), permitting “reconstruction or modification of public roads,” it does not contain the additional language permitting placement of utilities “along the right-of-way.” Nonetheless, Sherman County cannot narrow the application of uses permitted under ORS 215.283(1). Thus, under ORS 215.283(1)(i), utility facilities such as transmission lines and junction boxes may be placed in the public right-of-way as a matter of right.
Response: As discussed in Exhibits U (Sections U.5 and U.6) and V (Section V.5), the Facility will not have an adverse impact on or otherwise exceed the carrying capacity of public facilities, nor will the Facility exceed the resource carrying capacity. The construction and operation of the Facility will not injure existing water rights or exceed the amount of water available for beneficial use within the watershed, and the Facility will only occupy a small percentage of Sherman County and the surrounding area’s farmland. Moreover, the Facility will comply with air, water, land, solid waste, and noise pollution standards.

6. That no approval be granted for any use violation of this Ordinance.

Response: The proposed principal use is a commercial utility facility, which is a conditional use allowed in an EFU zone under SCZO 3.1.3(e)(17). The access roads are transportation improvements, which are also allowed conditionally in the EFU zone under SCZO 3.1.3(f). The proposed improvements of public roads are allowed outright under Section 3.1.2(g), as is the 230-kV transmission line, which is allowed outright under state law, subject only to ORS 215.275.

SCZO 5.3 General Conditions

Response: The Applicant has elected to seek a Council determination of compliance under ORS 469.504.(1)(b). The Facility will comply with the conditions of approval imposed by the Council.

SCZO 5.8 Standards Governing Specific Conditional Uses

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

Section 5.8(14) - Public Facilities and Services

(a) Public facilities including, but not limited to, utility substations, sewage treatment plants, storm water and water lines, water storage tanks, radio and television transmitters, electrical generation and transmission devices, fire stations and other public facilities shall be located so as to best serve the County or area with a minimum impact on neighborhoods, and with consideration for natural or aesthetic values.

Response: The wind turbines and associated power collection lines will be located to take optimal advantage of the wind resource for power generation. To best serve their intended purpose, the substations and transmission lines will be located within the general area of the wind turbines and close to the point of interconnection. The location of these facilities will “best serve” the County or the area because they will use a small fraction of agricultural land (less than one percent of the farmed acres within the leased area in Sherman County) to generate significant new tax revenues for the County and income for the landowners of the property leased to the Facility. The Facility will have no impact on neighborhoods because it will be located on rural land and not within neighborhoods. The location of the Facility will not have a significant adverse impact on, and will comply with the Council’s standards concerning natural and aesthetic values, as discussed in Exhibits L (Section L.3), P (Section P.8), Q (Section Q.4), R (Section R.4), S (Section S.7), and T (Section T.3).

(b) Structures shall be designed to be as unobtrusive as possible. Wherever feasible, all utility components shall be placed underground.

Response: Wind turbines and met towers must be mounted on tall tower structures aboveground. However, the Applicant will make these facilities as unobtrusive as possible through the use of uniform design and neutral colors. Based on conservative estimates, approximately 95 percent of the 34.5-kV collector lines will be placed underground. See Figures K-1 and K-2. The remaining 5 percent of the line is
not feasible to place underground and will require approximately 3.4 miles\(^{16}\) of aboveground line, which may run on overhead wooden monopole structures ranging from 40 to 50 feet in height.

\(c\) Public facilities and services proposed within a wetland or riparian area shall provide findings that: Such a location is required and a public need exists; and Dredge, fill and adverse impacts are avoided or minimized.

**Response:** The Facility is needed to help meet the state-mandated development of renewable electricity generation. The Facility will also provide substantial economic benefit to Sherman and Wasco counties in both construction and operation phases. Alternative Facility layouts with greater potential for stream crossing and wetland impacts initially were considered; however, the current proposed layout reflects consideration of zoning restrictions, land availability, utilization of previously disturbed land, stream crossings, and existing wetlands. The layout was specifically designed to avoid impacts to wetlands and waters to the maximum extent possible while still accomplishing Facility goals. Total in-channel impacts to streams and wetlands for permanent and temporary impacts will be approximately 177 cubic yards of removal and 566 cubic yards of fill (0.08 acre) and will affect 258 feet of stream length. In advance of field surveys, a literature review identified more than 100 additional streams and wetlands in preliminary Facility layouts. The survey corridor was narrowed in alternative Facility layouts to avoid these potential resources to the maximum extent possible.

Where stream and wetland impacts were unavoidable, the Facility was designed to minimize impacts. Efforts to avoid or minimize impacts include the following:

- Locate turbine strings, underground collector cables, and access roads to minimize the number of stream and wetland crossings.

- Use existing County and farm roads for Facility access and maintenance to the extent possible.

- Locate turbine strings and underground collector cable routes adjacent to existing farm roads as much as possible to minimize impacts associated with construction and maintenance of access roads.

- Locate new access roads, insofar as possible, adjacent to turbine towers. New access roads will serve the dual purpose of providing maintenance access for turbines and providing farmers with improved, all-weather access to their agricultural fields.

- Implement best management practices to ensure that temporary impacts to the stream and wetland areas are avoided to the maximum extent practicable, including but not limited to the following:
  - Prevent all construction materials and debris from entering waterway.
  - Use filter bags, sediment fences, silt curtains, or other measures sufficient to prevent movement of soil. The sediment fence, check dams, and other erosion control measures will remain in place until the affected areas are well vegetated and the risk of erosion has been eliminated.
  - Use impervious materials to cover stockpiles when unattended or during rain events.
  - Avoid operation of heavy machinery in waterway.
  - Flag or fence unavoidable wetlands adjacent to the construction area for protection.

- Construct the crossings when the channel is dry, if possible. In the event of flow in the channel, isolate work areas by temporarily diverting water around the area using silt curtains or check dams.

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\(^{16}\) This estimate will remain speculative until the Applicant conducts final engineering and addresses any unanticipated onsite constraints.
In addition, the Applicant will submit a National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit (1200-C) application to DEQ in the spring of 2012.

Section 5.8(20) - Non-farm Uses in an F-1 Zone - Non-farm uses, excluding farm related, farm accessory uses, or uses conducted in conjunction with a farm use as a secondary use thereof, may be approved upon a finding that each such use:

1. Is compatible with farm uses described in ORS 215.203(2);

Response: Although the SCZO allows commercial utility facilities to be located in the F-1 zone, “non-farm uses” must nonetheless meet the standards contained in SCZO Section 5.8(20). The placement of the proposed Facility would take very little land out of farm use. The area occupied by the Facility is a small fraction of the farmed land in the area. The Facility will permanently remove about 41 acres of agricultural land within the 8,705 acres under lease in Sherman County. Construction will temporarily affect about 139 acres of agricultural land under lease in Sherman County.

Farming activities will continue on cropland within the site boundary adjacent to Facility structures, particularly because Facility components will be placed to be as compatible as possible with farming. The Applicant will confer with each landowner to ensure that all uses are compatible with existing farming activities. Moreover, as discussed below, OAR 660-033-0130(37) was enacted for the purpose of ensuring that wind generation facilities are constructed and operated to be compatible with agricultural practices. Section K.5.1.4 below documents the Facility’s compliance with OAR 660-033-0130(37), which is directly applicable in Sherman County. Local farmers will be able to maneuver around the turbine towers and across gravel access roads. Landowners will be able to use the new access roads for movement of farm equipment between cultivated fields. The Applicant will locate access roads to minimize disturbance and maximize transportation efficiency, and will use existing public and private farm roads to the extent feasible. The Applicant will also develop a plan to minimize potential invasion by weed species in consultation with Sherman County’s weed officer. A weed management plan has been drafted. The draft plan is provided as Attachment I-3 to Exhibit I. The Applicant will submit the plan to the Sherman County Weed District Supervisor and the Wasco County Weed Department for approval in advance of Facility construction and operation. Exhibit I, Section I.5.3, of the ASC discusses temporary and permanent mitigation measures for noxious weeds, including maintaining weed-free staging areas, cleaning equipment and vehicles of mud and plant parts to prevent spreading of seeds, and reseeding with native grasses and other plants using an approved, certified weed-free seed mixture.

2. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use;

Response: “Accepted farming practices” is defined at ORS 215.203(2)(c) as “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.” Farming on adjacent land consists predominantly of winter wheat. Farmers in Sherman County tend to employ the summer fallow system of farming, where half of the farm is fallow at any given point to store moisture, to allow them to grow dry land wheat and barley. Very little farmland in Sherman County is irrigated. Winter wheat is planted in the fall and harvested in July and August of the following year. Spring wheat and barley are often planted, as well, and are used as disease and weed management. Cattle grazes more than 200,000 acres of land in the County on early summer rangelands and on the wheat stubble after it is harvested. Farmers also use aerial spraying techniques for disease and pest management. Farmers will spray early in the spring, usually mid-March through May, unless there is an early outbreak of disease, in which case spraying may begin earlier and run later in the season. Spraying for noncrop plants also begins in the spring but runs through the summer into the fall. A farmer might spray noncrop plants three times in the course of a summer (Sherman County, 2012; Macnab, pers. comm., 2012). Although construction activities may cause...
temporary displacement of crops and construction traffic could cause temporary delays for farm equipment and trucks, the Applicant will reseed temporarily disturbed areas and, when construction is complete, farm operators will be able to cultivate the land around the turbine pads. The Applicant will closely coordinate with farmers to ensure adequate and timely access to properties during critical periods in the farming cycle for practices such as harvesting and spraying.

3. **Does not materially alter the overall land use pattern of the area;**

**Response:** The area within the analysis area consists of primarily agricultural uses. Of the 531,200 acres of land in Sherman County, approximately 304,000 acres are tillable. Sherman County reports that about 110,000 acres of land are planted each fall as winter wheat to be harvested the following summer (Macnab, pers. comm., 2012). Cattle also grazes on a significant amount of land in Sherman County. The County reports that about 223,000 acres of native grasses and wheat stubble after harvesting are used as cattle grazing lands. The federal government also holds approximately 76,000 acres in programs such as the Conservation Reserve Program that pay farmers to leave fields fallow and not allow cattle grazing. A small percentage of the land within the analysis area within Sherman County is used for commercial, residential, and industrial uses. The largest towns within the analysis area are Moro and Grass Valley with approximately 500 residents total.

As noted above, the Facility will permanently remove 41 acres of land in Sherman County from farm use and will temporarily affect 139 acres under agricultural lease. Local farmers will be able to maneuver around the turbines and transmission towers and across gravel access roads, although some minor changes in sowing and harvesting patterns in the immediate vicinity of the strings may be necessary.

Moreover, land leases for the placement and operation of the Facility provide an additional source of income for the parcel owners, helping to stabilize the inherent volatility of farm income and therefore minimizing the potential for changes in the overall land use pattern of the area.

4. **Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract, and the availability of necessary support resources for agriculture;**

**Response:** The proposed site is currently primarily farmed for winter wheat and cattle grazing. The land on which Facility components will be located is not of uniform suitability. Instead, the land is characterized by a mosaic of soil types, ranging from Condon silt loam to Tub very stony soils. Nevertheless, the Facility will occupy approximately 41 acres of land in Sherman County that is now used for nonirrigated crop production. Consistent with the Council’s previous determinations respecting projects in Sherman County, the fact of such use demonstrates the “general suitability” for farm crops and livestock. Accordingly, the Facility does not comply with this criterion.

Under ORS 469.504(1)(b)(B), if a facility does not meet the applicable substantive criteria, the Council may nevertheless approve the facility if it complies with applicable statewide planning goals. Although SCZO 5.8 has been acknowledged by LCDC to be in compliance with the statewide planning goals, it is not required by any statewide planning goal.

The statewide planning goal that is applicable to this criterion is Goal 3 (Agricultural Lands). Goal 3 provides that “agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy.” As discussed below in Section K.5.1.4, OAR 660-033-0130(37) allows wind power generation facilities on agricultural lands subject to Goal 3 without a goal exception.

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17 See Golden Hills Final Order at 58.
Because the Facility satisfies the OAR 660-033-0130(37) criteria, it is also consistent with Goal 3. Stated differently, this requirement is not required in order to satisfy Goal 3, nor does it affect the impact of the proposed facility on agricultural lands. Thus, although the Facility does not comply with the Sherman County non-farm uses criterion at 5.8.(20)(4), the Facility “otherwise [complies] with the applicable statewide planning goals” under ORS 469.504(1)(b)(B). The Facility’s compliance with Goal 3 is also discussed on Section K.5.1.4 below.

5. **Complies with other applicable significant resource provisions; and**

**Response:** For the reasons discussed above, the Facility will comply with other SCZO provisions applicable to the EFU zone.

6. **Complies with such other conditions as deemed necessary.**

**Response:** The Facility will be subject to the conditions of the site certificate.

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

**SCZO § 11.1 Compliance Required**

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

**Response:** The Council’s rules are designed to identify all design and improvement standards and requirements applicable to the Facility. Exhibit E identifies all of the federal, state, and local permits and approvals needed to construct the Facility. All required ministerial permits or approvals will be obtained from the County or the designated official.

**SCZO § 11.2 Zoning or Other Land Development Permit or Approval**

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

**Response:** The Council has exclusive jurisdiction to issue site certificates for energy facilities that are under its jurisdiction. The Applicant has elected to seek a council determination of compliance with the Council’s land use standard. This Exhibit demonstrates compliance with that standard. Upon the Council’s approval of a site certificate and prior to any development activities, the Council will direct the County to issue all necessary land use permits approved by the Council. No construction will occur until the County issues the required permits.

**SCZO § 11.8 Streets and Other Public Facilities**

1. **It shall be the responsibility of the developer to construct all streets, curbs, sidewalks, sanitary sewers, storm sewers, water mains, and electric and telephone lines, necessary to serve the use or development in accordance with the specifications of the County and/or the serving entity.**

2. **Electrical lines and telephone lines shall be encouraged to be underground. Other utility lines shall be underground, unless otherwise approved by the County.**
3. The location, width and grade of streets shall be considered in their relationship to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use or development to be reserved.

4. All streets, as far as is practicable, shall be in alignment with existing streets by continuations of the centerlines. Necessary staggered street alignment resulting in “T” intersections shall, wherever possible, leave a minimum distance of 200 feet between the center lines of streets of approximately the same direction, and in no case shall such offset be less than 100 feet.

6. Streets shall be laid out to intersect at angles as near to right angles as practicable, and in no case shall an acute angle be less than 80 degrees unless there is a special intersection design approved by the County Roadmaster and the Superintendent of Public Works and/or the City Engineer of an affected City.

7. Whenever existing streets, adjacent to or within a tract, are of inadequate width and/or improvement standards additional right-of-way shall be provided and additional improvements may be required.

9. Except for the extension of existing streets, no street names shall be used which will duplicate or be confused with the name of an existing street in the County or within a City within a radius of 6 miles or within the boundaries of a special district such as school or fire.

10. Street grades shall not exceed 8 percent: on arterials, 10 percent on collectors, and 12 percent on all other streets including private driveways entering upon a public street or highway.

11. Center Line radii of curves shall not be less than 500 feet on arterials, 250 feet on collectors, or 100 feet on all others. Lesser or greater standards may be permitted or required by the County.

**Response**: The Applicant has not proposed any streets or public facilities. Section 11.8 is intended to regulate a more urban type of development than the proposed Facility. The Facility will not incorporate streets, curbs, sidewalks, sanitary sewers, storm sewers, water mains, or electric or telephone lines (aside from the transmission lines that are included as part of the Facility, as discussed throughout the ASC). Therefore, the criteria in SCZO Section 11.8 do not apply.

However, the Applicant proposes to construct new access roads within the Facility site boundary for access to turbine strings and other facilities that are not for public access, as discussed in Exhibit B. These roads are required to comply with the specifications of local access roads as discussed in response to the conditional use criteria for transportation improvements in SCZO 5.2.2, not the criteria in SCZO 11.8.

**SCZO § 11.10 Completion or Assurance of Improvements**

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

2. A personal bond co-signed by at least one additional person together with evidence of financial responsibility and resources of those signing the bond sufficient to provide reasonable assurance of the ability to proceed in accordance with the agreement.

3. Cash deposit.

4. Such other security as may be deemed necessary by the County Court to adequately assure completion of the required improvements.

5. Amount of Security Required. Such assurance of full and faithful performance shall be for a sum approved by the County as sufficient to cover the cost of the improvements and repairs, including related engineering, inspection and other incidental expenses, plus an additional 1:5 percent for contingencies.

Response: The Council has exclusive jurisdiction to issue site certificates for energy facilities that are under its jurisdiction. The Applicant has elected to seek a Council determination of compliance with the Council's land use standard. Exhibit W provides a detailed review of site restoration actions and tasks for dismantling and decommissioning the Facility, including compliance with OAR 345-022-0050, Retirement and Financial Assurance.

SCZO § 11.11 [Untitled]

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

Response: As noted above, Exhibit W provides a detailed review of site restoration actions and tasks for dismantling and decommissioning the Facility, including maintenance of a bond.

K.5.1.3 Applicable Substantive Criteria from the SCCP

SCCP Section VIII. Planning Process and Citizen Involvement

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

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

Response: Because the Applicant has elected to obtain a Council determination of compliance under ORS 469.504(1)(b), the Council’s procedures rather than the County’s specific public involvement procedures will apply. The Council’s process offers opportunities for interested persons and governmental agencies to comment on the Application. Following submittal of the Application, determination of completeness, and public notice in local newspapers, the Oregon Department of Energy (ODOE) will conduct a public information meeting on the Application that will provide an opportunity for comment. Thereafter, a public hearing will be held on the Council’s draft proposed order, offering another opportunity for public comment. The Council’s process also provides affected public agencies and area landowners with notice of the Application and an opportunity to comment.
SCCP Section XI. Physical Characteristics

**Goal I.** Improve or maintain the existing quality of the physical environment within the County.

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

**Response:** The single listed policy under this goal (Policy I) requires that erosion control provisions be incorporated into the subdivision ordinance, which is not applicable to the Facility. Nonetheless, as discussed in Exhibit I (Section I.5.1), the Applicant will implement measures to decrease soil exposure during Facility construction. Construction will be conducted pursuant to an NPDES 1200-C permit issued by DEQ. The NPDES permit will require the use of best management practices to minimize the potential for erosion.

**Goal II.** To protect life and property from natural disasters and hazards.

**Response:** The proposed Facility will meet the requirements of Goal II. As discussed in Exhibit H (Section H.6), Applicant will conduct an appropriate site-specific geotechnical evaluation before construction to identify and avoid geological hazards.

**Goal III.** Provide for the rational development and conservation of the aggregate resources within the County.

**Response:** Mineral and Aggregate Resources are discussed in Section 1 of Sherman County’s Goal 5 inventory. The document identifies 48 mineral and aggregate resources sites in the County, and seven sites occur within 5 miles of the Facility site boundary in Sherman County (and two within the Facility site boundary itself). The resources closest to the Facility site boundary are shown in Figure K-5. In the County’s Goal 5 inventory, conflicting uses are identified and include “dwellings except those in conjunction with mining operations; parks, playgrounds, campgrounds, hunting, and fishing preserves; and school.” No mention of wind facilities or a similar use is included in the conflicting uses. In addition, any aggregate material needed for Facility construction will be obtained from local permitted quarries near the Facility site.

**Goal IV.** To provide a detailed investigation of the County’s groundwater resources.

**Response:** The Facility will use a small amount of groundwater. The O&M building will be served by an onsite well. No permit is required to draw from this well because Oregon allows the withdrawal of up to 5,000 gallons per day without a permit and the Facility will use less than 5,000 gallons per day (see Exhibit O).

**Goal V.** To maintain the multiple use management concept on Bureau of Land Management Lands within Sherman County.

**Response:** The Facility will not be sited on Bureau of Land Management (BLM) lands, so this goal does not apply.

**Goal VI.** Encourage preservation of the rural nature [of] the Sherman County landscape.

**Policy VII.** Trees should be considered an important feature of the landscape and therefore the County Court shall encourage the retention of this resource when practical.
Response: The Facility will be sited in a largely treeless landscape and is not expected to impact trees.

Goal VII. Encourage preservation of fish and wildlife habitat in the County.

Response: The Facility is compatible with this goal. Construction and operation of the Facility will comply with the Oregon Department of Fish and Wildlife (ODFW) habitat mitigation goals and standards, and will not cause any significant adverse impacts to protected or sensitive plant or animal species, as discussed in Exhibits P and Q (Sections P.7, Q.5, and Q.6). The SCCP lists four policies under this goal, none of which applies to the Facility.

Goal VIII. Encourage the diversity of plant and animal species within the County.

Response: As explained in Exhibits P and Q, the Facility is not expected to significantly affect any listed threatened or endangered species or adversely affect fish and wildlife species or habitat. Exhibit Q (Sections Q.5 and Q.6) demonstrates that there will be no direct Facility-related impacts to state or federal listed species, and there is little or no habitat in the analysis area to support such species. Conditions proposed in Exhibit P (Section P.9) will impose monitoring plans developed in consultation with ODFW.

SCCP Section XII. Social Characteristics

Goal I. To improve or maintain the current level of social services available with the County and to assure the provision of public facilities consistent with the intensity of land use.

Response: Section XII Goal I contains ten policies. Policies that are applicable to the proposed Facility are discussed below. Note that Policy II deals with the adequacy of school services. As discussed in Exhibit U, the Facility will not adversely affect school services. Policies IV and V address maintenance and improvement of the road system. Although no public roads or highways will be constructed as part of the Facility, the Applicant has agreed that any improvements to existing public roads will meet or exceed road standards for the road classifications in the County’s Transportation System Plan and Zoning Ordinance.

The overall concern of this goal is the adequacy of public services in Sherman County. The Application is consistent with this goal because it meets the Council’s Public Services Standard, as addressed in Exhibit U. Based on the evidence provided in Exhibit U and the responses below, the proposed Facility is compatible with Goal I.

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

Policy IX. The continuing loss of economic opportunities for residents of the County is of great concern to the residents. The reduction of need for agricultural based jobs due to improved farming technology and practices, the inability to keep families employed or offer employment opportunities to attract new citizens or the children of existing residents results in a stagnant or declining population. It is a matter of great urgency that the Court gives increased consideration to land use applications, which will increase economic diversity and employment opportunities. This increased consideration shall not be made to the detriment of existing residential structures. This consideration should focus on long-term job creation and should not be used as a means to allow residential and commercial uses to locate outside urban growth and rural service center (communities) boundaries.
**Response:** During its operating life, the Facility will employ 20 to 25 full-time and part-time employees. Facility construction is expected to take about 8 months and employ an estimated 300 workers at peak periods. Construction workers will include locally hired workers as local expertise and availability allows. Development of the Facility will therefore increase economic diversity within the County and offer nonagricultural employment. The Facility will provide agricultural property owners with an additional revenue stream to supplement farm income, insulating those property owners from market and weather fluctuations. Accordingly, the Facility is consistent with Policies I and IX.

**Policy X. Transportation Planning Policies**

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

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

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

**Response:** No new public roads are proposed with this Application. The proposal may result in upgrades to existing public and private roads. Any upgrades will conform to the adopted Transportation System Plan.

B. **Local-State Coordination Policies**

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

**Response:** The Facility has direct access from U.S. Route 97 (US 97) just south of the border between Sherman and Wasco counties.

C. **Protection of Transportation Facilities Policies**

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

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

**Response:** The primary transportation route to the site is Interstate 84 (I-84) east to US 97 south to the Facility area. Some traffic will continue east on Oregon Route 218 (OR 218) into the Facility. The remaining traffic will travel on a secondary transportation route from US 97 to Oregon Route 293 (OR 293) into the town of Antelope. From the State Highways, local access will be provided through a combination of existing private and county roads, and new roads constructed onsite for Facility access. County roads that may be used for access to the facility during construction may include Wilcox Lane, Decker Road, Helger Road, and Bennett Road. New road construction and any upgrades or improvements to existing roads will occur according to County ordinances. Large delivery trucks will use the primary transportation corridors to deliver Facility components. The Applicant will note the condition of roads before the delivery of Facility components and return the roads to their previous condition after construction is complete if necessary.
deterioration has occurred. Traffic volumes will be minimally impacted and volume will remain within the capacity of the roads to handle.

**Goal II.** To protect historical, cultural and archeological resources from encroachment by incompatible land uses and vandalism.

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

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

**Response:** As discussed in Exhibit S, historic, cultural, and archeological resources will be protected during Facility construction and operation. None of the Historical Sites listed in Sherman County’s Goal 5 inventory is within the Facility site boundary. Figure K-6 shows that there is only one historical site (listed by Oregon Inventory of Historic Properties) within the Facility site boundary: Guyton Farm. According to the Oregon Inventory of Historic Properties, Guyton Farm is significant because it “reflects an intact farming/ranching unit.” Guyton Farm is approximately 1 mile from the nearest Facility turbine. While Facility elements may be visible from Guyton Farm, the Facility will not affect its significance as “a good example of an intact farming/ranching complex.” Therefore, the Facility will have no effect on County-identified sites, and no effect on State-identified sites.

**SCCP Section XIV. Economics**

**Goal I.** Diversify the economic base of the County and maintain the viability of the agricultural sector.

**Response:** The policies under Goal I are not directly applicable to the proposed Facility, but the Facility is consistent with the language of the goal itself. It will diversify the economic base of the County by providing nonagricultural sector jobs and investment. The Facility will also help to maintain the viability of the agricultural sector by creating compatibility with surrounding farm uses and providing a stable source of revenue, through lease payments, to farm operators. Additional revenues received by farmers from wind projects will supplement farm income and help ensure that lessor-landowners’ farming operations can remain viable in years with low crop yields or prices.

**SCCP Section XV. Energy**

**Goal I.** Conserve energy resources.

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

**Response:** The proposed Facility is a renewable resource energy facility. Therefore, the Facility is consistent with Goal I and Policy I.

**SCCP Section XVI. Land Use**

**Goal I.** To provide an orderly and efficient use of the lands within Sherman County.

**Policy IV.** Commercial businesses, except those related to agricultural uses, should be located within the incorporated cities or within areas served by the Biggs or Kent special service districts.
**Response:** The proposed Facility is a “commercial utility facility,” which is conditionally allowable in Sherman County’s EFU zone. Moreover, the Facility is locationally dependent and, accordingly, cannot be located within any of the area’s incorporated cities, nor will the Facility significantly impact services in the County. The Facility’s colocation and compatibility with existing and ongoing agricultural activities provides an example of orderly and efficient land use.

**SCCP Section XVII. Comprehensive Land Use Plan Map**

**Cropland.** Cropland is the “prime agricultural” lands within the County. Lands so designated shall be preserved for exclusive farm use. All uses, which are not directly or indirectly related to farm use, shall be limited to those which provide public service and could not be provided for within other lands.

**Response:** As noted above, “commercial utility facilities” are allowable as conditional uses in Sherman County’s F-1 zone. The Facility is dependent on optimal wind resources and proximity to transmission facilities; therefore, it cannot be located within any of the nearby cities.

K.5.1.4 Directly Applicable Statutes, Goals, and LCDC Rules (Sherman County)

**OAR 345-021-0010(1)(k)(C)(iii)** Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals, and statutes.

**Response:** Because the SCZO does not fully implement the uses permitted in EFU zones under ORS 215.283(1) (which include “utilities necessary for public service”), the Applicant has provided the information below to demonstrate compliance with the ORS 215.283(1) and ORS 215.275. In addition, since the last periodic review of the SCCP and SCZO, the LCDC amended certain administrative rules governing conditional uses on EFU land, and consequently, for the portion of the Facility in Sherman County, these amended rules apply directly to the Facility. Specifically OAR 660-033-0130(37) provides criteria for locating a “wind power generation facility” on high-value farmland soils. The proposed Facility and all related or supporting facilities fit entirely within the definition of “wind power generation facility” in OAR 660-033-0130(37). Thus, the Applicant provides the information below to demonstrate that the Facility also meets the applicable approval criteria in OAR 660-033-0130(37).

Conservatively estimated, the Facility lease area in Sherman County consists of 10,212 acres of high-value farmland soils. In total, the Facility will permanently disturb approximately 72.6 acres in Sherman County, 53.9 acres of which are high-value farmland soils. The Applicant considered reasonable alternatives for the Facility, but when factoring the purpose and the Applicant’s needs, siting the Facility on the 53.9 acres of high-value farmland soils in the proposed location is necessary and does not result in significantly more adverse impacts than would typically result if the Facility was sited in other locations in the general vicinity, including those with non-high-value farmland soils. High-value farmland consists of Class I and Class II soils where irrigated, though many of the soils in Sherman County are considered Class III when they are not irrigated. The majority of farmland (dry land wheat farming and grazing is predominant) within the site boundary has little to no irrigation and as a result, the Class I and Class II acreages are overestimated. However, Class I and Class II soils still constitute high-value farmland soils under ORS 215.710 and thus the Facility is subject to OAR 660-033-0130(37)(a).
Directly Applicable Land Use Statutes (ORS 215.283(1) and 215.275).

ORS 215.283. The following uses may be established in any area zoned for exclusive farm use:

(c) Utility facilities necessary for public service ** not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility may be established as provided in ORS 215.275.

Response: The 230-kV transmission line is within the scope of ORS 215.283(c), which allows “utility facilities necessary for public service” on EFU land subject to the provisions of ORS 215.275. ORS 215.275 lists factors for deciding whether a utility facility is “necessary for public service.” ORS 215.275 provides:

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

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

(a) Technical and engineering feasibility;

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

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

Response: The 230-kV transmission line qualifies as a “utility facility necessary for public service.” ORS 215.275(2) requires the Applicant to demonstrate first that it has considered “reasonable alternatives” to siting the Facility on EFU-zoned lands. An alternative cannot be reasonable if it does not meet the Facility’s purpose and the Applicant’s need. Moreover, an alternative is not “reasonable” if it is not reasonably capable of being accomplished due to engineering, environmental, and technical considerations that affect the alternative.

Siting criteria that influenced the Applicant’s selection process included identifying a direct route from the proposed turbines to the interconnection point at the Buckley substation while minimizing disturbance and avoiding sensitive resources; minimizing impacts to agricultural practices by routing along property lines; navigating difficult and varied topography; and locating the route through land for which the Applicant has negotiated or is in the process of negotiating long-term wind leases or easements. It is not feasible or technically possible to interconnect with BPA’s 500-kV transmission line without the transmission line. The proposed transmission line is also “locationally dependent.” It must be located in proximity to the proposed turbines because that is where the power will be generated. It must also be located near the rebuilt Buckley substation, which is the point of interconnection to the BPA system. Finally, there are no urban or nonresource lands available for locating the transmission line.

As an alternative to the proposed 230-kV overhead line, the Applicant considered removing the 230-kV overhead line between the northern and southern Facility collector substations, and even removing the
southern substation, to reduce the overall length of the 230-kV transmission line to 20 miles and limit the 230-kV line to one county. If such an alternative design were proposed, under ORS 469.300, the transmission line would not be considered an energy facility, and would not be reviewable under this Application requirement. However, the length of overhead 34.5-kV lines within the Facility site boundary would substantially increase, creating additional disturbance to the resources identified in OAR 345-021-0010(1)(b)(D)(i-vii) and potentially creating significant additional visual impacts. For these reasons, the Facility’s 230-kV transmission line is “necessary for public service” and therefore allowed by right under ORS 215.283(1)(c).

ORS 215.275(4) requires that the owner of a utility facility approved under ORS 215.283(1)(c) be responsible for restoring agricultural land and associated improvements to their former condition if they are damaged or disturbed by siting, maintenance, repair, or reconstruction. As described throughout this Exhibit, lands temporarily affected by construction will be returned to their original condition. As discussed in Exhibit W, the Facility will be decommissioned and the site will be restored.

ORS 215.275(5) requires the imposition of “clear and objective conditions” on siting a utility facility under ORS 215.283(1)(c) to “mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.” As described in detail in response to OAR 660-033-0130(37), to the extent practicable, the transmission line will be located in the margins of agricultural fields. The Applicant has also drafted a weed management plan (Attachment I-3 to Exhibit I) to prevent the establishment of weeds, and will obtain an NPDES 1200-C permit, which requires the implementation of an erosion and sediment control plan and the use of best management practices to minimize the potential for erosion. Staging areas used during construction will be rehabilitated and made available for agricultural use. Rehabilitation will address soil compaction if needed to ensure that the area is again productive for agricultural use. Further, as discussed in Exhibit W, the Facility will be decommissioned and the site will be restored.

Construction of the transmission line will not substantially add to the impacts on agricultural land caused by the principal use and access roads. Permanent impacts from the transmission line will be approximately 0.09 acre, compared to the total of 72.6 acres for the area of the Facility within Sherman County. Locating the proposed substations and transmission line on 0.09 acre will not cause a significant change in or significantly increase the cost of accepted farming practices.

**Directly Applicable Administrative Rule (OAR 660-033-0130(37)).**

OAR 660-033-0130(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:
(i) Technical and engineering feasibility;
(ii) Availability of existing rights of way; and
(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

Response: OAR 660-033-0130(37)(a) requires an applicant to demonstrate that reasonable alternatives were considered for siting a project on high-value farmland soils and that siting a project on high-value farmland soils was necessary for the facility or component to function properly. The Facility lease area in Sherman County consists of 10,212 acres of high-value farmland soils. In total, the Facility will permanently disturb approximately 72.6 acres in Sherman County, 53.9 acres of which are high-value farmland soils.

The Applicant considered reasonable alternatives for the Facility, but when factoring the purpose and the Applicant’s needs, siting the Facility on the 53.9 acres of high-value farmland soils in the proposed location is necessary and does not result in significantly more adverse impacts than would typically result if the Facility was sited in other locations in the general vicinity, including those with non-high-value farmland soils.

Project Purpose: The purpose of the Facility is to generate up to 535 MW of renewable energy from the available wind resource and sell the energy into the regional market using existing electrical interconnections. The Facility requires sufficiently “energetic” wind to enable a commercially viable project, including access to proprietary meteorological data.

Factors Needed to Meet the Project’s Purpose, and the Applicant’s Needs: To accomplish the purpose, the Facility requires a consolidated area of land large enough to accommodate a facility capable of producing up to 535 MW of renewable energy, including all of the Facility’s related or supporting components. The property needs to have sufficient wind resources for a viable commercial wind energy facility and be capable of connecting with the regional electrical grid. The land must be reasonably accessible by existing roads. In addition to these considerations, the consolidated land also needs to be of sufficient size and dimension or configuration to accommodate required setbacks and minimize “wake” effects associated with the distance between turbines and turbine strings. The Facility layout must minimize wake effects within the site boundary (minimize the effect between any of the proposed turbines as well as the wake effect between proposed turbines strings), and also minimize wake effects on adjacent project(s). These factors are then complicated by whether the Applicant can obtain control of the needed land (in a highly commercially competitive environment) and whether the Applicant has the necessary wind data from lands in order to site a project. Finally, the Applicant does not desire to propose a project in a location that would cause significant adverse impacts to native habitat or existing threatened or endangered plant or animal species that require undisturbed habitat for their survival.

No Reasonable, Available Alternatives to Meet Project Purpose: When considering the purpose and various needs in conjunction with the amount of high-value farmland soils in the area, there are no reasonable alternative sites that could accommodate the Facility. An “alternative” considered under OAR 660-033-0130(37)(A) must first be a “reasonable” alternative for it to be capable of consideration.

Most of the non-high-value farmland alternatives do not have a substantially similar wind resource comparable to the wind resource at the proposed site. Moreover, those locations can be characterized as water, drainages, or higher-value wildlife habitat, areas which are generally unfavorable for wind energy facility development and would likely threaten habitat and protected plant and animal species. Further, given the existing wind energy development in the vicinity, areas that could be considered “alternative” sites are already occupied by other existing or proposed projects or are not controlled by Applicant.
Considering both onsite and offsite alternatives, for the Facility to “function properly,” and to deliver up to 535 MW of clean, renewable energy to the grid and meet the Facility’s purpose, no other alternatives are reasonable. The availability of the wind resource, the capability to construct reasonably direct access roads, the ability to build related and supporting facility components, and the ability to do so in an environmentally benign (and beneficial) way require the locations as proposed, on high-value soils. The locations are compelled by “technical and engineering feasibility” considerations related to project design, including the connectivity of turbines through overhead and underground collector cables, roads, and local and regional transmission constraints. Finally, the environmental, economic, social, and energy (ESEE) analysis below shows that other locations may cause significantly greater impacts to habitat and wildlife.

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof 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 on other agricultural lands that do not include high-value farmland soils.

Response:

Environmental. The Facility primarily avoids impacts to wetlands, protected areas, fish and wildlife habitat, and threatened and endangered species, and to the extent some impact occurs, the Applicant will mitigate for any unforeseen impacts to wildlife habitat based on habitat categorization, in accordance with applicable EFSC habitat standards. Locations within the site boundary other than the proposed locations would have a greater impact on environmentally sensitive areas, including habitat. Implementation of OAR 660-033-0130(37) potentially creates significant tension between the state’s goals of protecting habitat and the preservation of agricultural lands. However, owing to Applicant efforts, the Facility can accomplish both objectives with the proposed layout. Therefore, when considering environmental consequences, the siting of the Facility on approximately 53.9 acres of high-value farmland in Sherman County will not result in significantly more adverse environmental impacts than if the Facility were located on other land within the site boundary. If compliance with OAR 660-033-0130(37) required wind turbine and roadway locations other than those proposed, the Facility would impose significantly greater impacts on habitat.

Socioeconomic. The Applicant has demonstrated that the Facility will not have any significant adverse impacts on public services or other community resources, such as housing, sewer, water supply, waste disposal, health care, education, or transportation (as shown in Exhibit U). The Facility will create jobs and contribute to the income of the area as well as supplement farmers’ income with lease payments. The Facility only permanently impacts a relatively small amount of agricultural activity and when such impacts are compared with the overall Facility benefits, there is no basis to conclude that the Facility would result in significantly more adverse impacts than if the Facility were located on other agricultural land.

Energy. The Facility will produce clean, renewable energy that will help Oregon and the northwest region meet increasing energy demands. The Facility has been sited to maximize the available wind resource, and the Applicant will optimize the potential energy creation from the Facility through the micrositing process, as addressed in Section B.2.1 of Exhibit B. For these reasons, the Facility locations proposed within the site boundary satisfy the ESEE criteria better than less energetic locations. The energy consequences of the Facility will not result in significantly more adverse impacts than if the Facility were located on other agricultural land.

In sum, the Facility will not result in significantly more adverse impacts than if a greater portion of the Facility were sited on non-high-value farmland soils. Thus, OAR 660-033-0130(37)(a)(B) is met.
(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

Response: Costs are not the sole consideration for siting the Facility as proposed. Other factors that were considered in siting the Facility include land use (Exhibit K), geology (Exhibit H), hydrology (Exhibits J and O), wildlife (Exhibits P and Q), and a variety of other factors addressed in the ASC. A corridor selection assessment is provided in Section B.5 of Exhibit B.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

Response: As discussed extensively in Exhibit W, the Facility will be decommissioned and the site will be restored. Actions for site restoration are listed in response to OAR 345-021-0010(1)(w)(B), which includes measures to restore agricultural soils upon retirement. Accordingly, this criterion is satisfied.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

Response: As discussed below, the Applicant can demonstrate that the criteria in OAR 660-033-0130(37)(b) are met and therefore OAR 660-033-0130(37)(a)(E) is also satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

Response: As discussed in response to section 5.8.20 of the SCZO, the Facility is consistent with the purpose of Sherman County’s EFU zone, including agricultural operations. To the extent feasible (and in consultation with the owners and operators), Facility components will be placed on the margins of cultivated areas to reduce potential conflict with farm operations and existing roads will be used by the Facility to minimize the need to construct new roads. Where new roads are required, the Applicant will try to locate the roads in the margins of cultivated areas near turbines and transmission interconnection lines. The improved and new roads will actually enhance access by land managers and farmers to the fields, and during construction, the Applicant will provide access across construction trenches to fields as needed.

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

Response: As discussed in response to SCCP Section XI, Physical Characteristics, the Applicant will obtain an NPDES 1200-C permit, which requires the implementation of an erosion and sediment control plan and
the use of best management practices to minimize the potential for erosion. Best management practices will include but will not be limited to, using hay bales or other similar forms of containment, watering to prevent windblown erosion in disturbed areas, and revegetation. Further, to minimize soil exposure during installation of collector lines, the Applicant will attempt to only open as much trench in one day as can be excavated and backfilled, and in no case will a trench remain open more than 7 days, as allowed by the 1200-C permit. Staging areas will need to be stripped and the soil stockpiled before gravel is placed on the staging areas. The stockpiling will occur during the time of year when rainfall is the lowest; consequently, very little erosion is likely to result. The Applicant will apply best available practices to prevent weed infestation and erosion of the stockpiled soils, developed in consultation with the landowners and the local weed control authority.

Measures will be taken during Facility construction to minimize erosion and disturbed areas will be restored upon the completion of construction, including regrading the staging areas to original contours and replanting. Thus, the Applicant can demonstrate that the presence of the Facility will not result in unnecessary soil erosion or loss that could limit productivity on the subject property. Accordingly, OAR 660-033-0130(37)(b)(B) is met.

**Response**: To the extent practicable, the Facility will use existing roads and Facility components (such as turbine pads and new access roads) will be located in the margins of agricultural fields. Staging areas used during construction will be rehabilitated and made available for agricultural and wildlife use. Rehabilitation will address soil compaction if needed to ensure that the area is again productive for agricultural use. Any needed rehabilitation measures will be coordinately closely with farm operators to restore soils. Exhibit I addresses the potential for soil compaction that could reduce the productivity of soil for crop production (Section I.4.3) and the measures the Applicant will undertake to avoid and minimize soil compaction(Section I.5.3). During Facility construction, temporary disturbances associated with construction of the roads, crane paths, and other graveled surfaces will result in compaction of the soil. At the completion of construction, these temporary areas will be decompacted by thoroughly tilling the temporarily disturbed areas and returning these areas into useful agricultural land. Reclamation of temporary disturbances will allow for agricultural activities to occur on site around the permanent footprint of the Facility. During operations, maintenance vehicles will stay on the constructed access roads, and material laydown will occur within the graveled operations and maintenance facility. Restricting vehicles to using the access roads and storing equipment in dedicated graveled areas will avoid unnecessary compaction to the area surrounding the Facility. In the unlikely event that maintenance activities require larger equipment or large components to be delivered to a specific turbine, the temporary disturbance caused by this activity would be decompacted and reclaimed by thoroughly tilling the disturbed area. Therefore, the likelihood of soil compaction during construction or operation that would affect ongoing farming operations is small. An approved plan pursuant to this section of OAR 660-033-0130(37) will be unnecessary, as the Applicant anticipates that conditions of the site certificate will sufficiently address this issue. Further, as discussed in detail in Exhibit W, the Facility will be decommissioned and the site will be restored. Accordingly, construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production, and OAR 660-033-0130(37)(b)(C) is met.
satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

Response: The Applicant has drafted a weed management plan to prevent the establishment of weeds (see Attachment I-3 to Exhibit I). The plan will be completed in consultation with the Sherman County Soil and Water Conservation District and will likely include measures to clear weeds through a combination of burning (if possible), spraying, and mowing plus planting of a native grass seed mix (certified weed free) with a no-till drill in the fall. The Applicant will be responsible for weed management during construction and operation. For these reasons, and the reasons already set forth in the Application, the Applicant can demonstrate that adequate measures will be undertaken to help ensure that construction or maintenance activities do not result in the spread of noxious weeds during Facility construction and operation. Therefore, OAR 660-033-0130(37)(b)(D) is met.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

Response: Of the 24,502 acres within the site boundary in Sherman County, approximately 6,557 acres are nonarable and 17,936 are arable. Because the Facility will be sited on a combination of arable and nonarable lands, the approval criteria of OAR 660-033-0130(37)(b) apply to the entire Facility pursuant to OAR 660-033-0130(37)(b). Compliance with those criteria is discussed above.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

Response: As noted above, the Facility will be sited on a combination of arable and nonarable lands. Accordingly, the approval criteria of OAR 660-033-0130(37)(b) apply to the entire Facility. Compliance with those criteria are discussed above.

K.5.2 Wasco County

As noted in Section K.2.2.2 and consistent with the Council’s past decisions,18 the portion of the Facility in Wasco County is assessed as three separate land uses under the WCLUDO.

- Commercial Utility Facility (consisting of wind turbines, electrical collection system, collector substations, met towers, O&M building, and new and improved access roads)
- Transportation Improvements (consisting of improvements to existing public roads)
- Utility Facility Necessary for Public Service (consisting of the 230-kV transmission line)

Commercial Utility Facility—With the exception of the 230-kV transmission line (allowed outright, subject to Wasco County standards implementing ORS 215.275) and improvements to existing public roads (allowed outright), the Facility and its related or supporting facilities constitute a “wind power generation facility,” which is a type of commercial utility facility allowed as a conditional use under WCLUDO 3.210.E.8. The general conditional use criteria and the specific wind power generation facility criteria are addressed below.

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18 See, e.g., Summit Ridge Final Order at 26-27.
Transportation Improvements—WCLUDO 3.210.B.7 allows outright the reconstruction or modification of public roads and highways. New and improved access roads are allowed conditionally as components of the commercial utility facility.

Utility Facility Necessary for Public Service—WCLUDO 3.210.D.12 allows outright utilities necessary for public service, subject to the standards set forth at WCLUDO 3.210(J)(8) (which implements ORS 215.275). Because the WCLUDO is consistent with state law, a determination and justification that the 230-kV transmission line is “necessary for public service” is described below in response to WCLUDO 3.210(J)(8).

WCLUDO Section 3.210(J)(8) is only applicable to the 230-kV transmission line. WCLUDO Section 3.210(J)(17) is only applicable to the “wind power generation facility,” which includes towers and pads, met towers, collection systems, private roads, the O&M building, and laydown areas. WCLUDO Chapter 5 is only applicable to those uses that are allowed as conditional uses under the WCLUDO (Commercial Utility Facility). The balance of the WCLUDO criteria, as well as the applicable substantive provisions from the WCCP, apply to the Facility as a whole.

K.5.2.1 Applicable Substantive Criteria from the WCLUDO

Chapter 3—Basic Provisions (Zoning)

WCLUDO Section 3.210 – Exclusive Farm Use Zone

SECTION 3.210(A) Purpose. The purpose of the “A-1” Exclusive Farm Use Zone is to preserve and maintain agricultural lands for farm use consistent with historical, existing and future needs, including economic needs that pertain to the production of agricultural products; and to permit the establishment of only those uses that are compatible with agricultural activities consistent with the applicable Statutory and Administrative Rule provisions of ORS Chapter 215 and OAR Chapter 660, Division 33. Uses, buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the “A-1” Exclusive Farm Use zone shall comply with the following regulations. If these regulations are preempted by mandatory ORS’s or OAR’s those shall be applied directly pursuant to ORS 197.646.

Response: The portion of the Facility in Wasco County will be located in the EFU zone.

SECTION 3.210(B). Uses Permitted Without Review. The following uses are permitted on lands designated “A-1” Exclusive Farm Use without review.

TRANSPORTATION FACILITIES

7. Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including additional travel lanes, where no removal or displacement of buildings would occur and not resulting in any new land parcels.

Response: The proposed Facility may require upgrades to existing public roads. These improvements will not remove or displace any structures, or result in new land parcels, and therefore are permitted without review pursuant to WCLUDO 3.210.B.7.

SECTION 3.210(C). Uses Permitted Subject to Standards/Type II Review. The following uses may be permitted on a legal parcel on lands designated “A-1” Exclusive Farm Use subject to the Subsection F – Property Development Standards, Subsection H – Agricultural Protection, Chapter 10 – Fire Safety Standard, Chapter 20 – Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced or applicable standards.
UTILITY/ENERGY FACILITIES

Pursuant to Chapter 4 – Supplemental Provisions - Section 4.070, these uses do not require a variance if they exceed 35 feet in height.

12. Utility facilities “necessary” for public service, including wetland waste treatment systems, and Electrical Transmission Facilities under 200 feet in height, but not including commercial utility facilities for the purpose of generating electrical power for public use by sale, or Electrical Transmission Facilities over 200 feet in height, subject to Section J(8), Additional Standards below.

Electrical Transmission is divided into three categories. (1) Distribution/Utility Facility Service Lines under 200’ in height which are allowed without review; (2) Related and accessory transmission which are allowed accessory to a new energy generation facility if owned by the developer and are not a separate use; and (3) New transmission facilities. ORS 215.283 only allows Electrical Transmission Facilities over 200’ to be reviewed as a CUP. So, while other zones require all Electrical Transmission Facilities to be reviewed as a CUP, this zone must be consistent with ORS.

Response: The proposed Facility includes a 32-mile, 230-kV transmission line that will connect the Facility to BPA’s 500-kV transmission line at the rebuilt Buckley substation. The 230-kV transmission line corridor will extend for approximately 12 miles from the southern Facility collector substation to the northern Facility collector substation, and continue for 20 miles from the northern collector substation to BPA’s existing line. As described below, the transmission line meets the definition of a utility facility necessary for public service. A determination that the transmission line is necessary for public service is described below in response to WCLUDO 3.210(J)(8), which implements ORS 215.275.

The transmission line also qualifies as a transmission facility under 200 feet in height pursuant to WCLUDO 3.210(D)(13). The Applicant will ensure that all properties located within the Facility site boundary are considered to be legally created parcels. In advance of construction, the Applicant will confirm that all properties located within the Facility site boundary are considered to be legally created parcels. Per discussion with planning staff at the Wasco County Planning Department, a legal parcel is one that was created through in a duly recorded subdivision, a duly recorded land partition, or a deed or land sales contract before September 4, 1974. To determine if a parcel was created through a duly recorded subdivision, a duly recorded land partition, or a deed or land sales contract before September 4, 1974. To determine if a parcel was created through a duly recorded subdivision or land partition, the Applicant will review the Wasco County Planning Department’s online records with the help of Planning staff to understand how to determine if a parcel was legally created. For the remaining parcels that do not fall within the first two categories, the Applicant will review the physical deed records at the Wasco County Assessor’s Office for each parcel to determine if they were generated before September 4, 1974. Should the Applicant and the County find that any parcels were not legally created, the Applicant will work with the County and the landowner to ensure that it becomes a legal parcel.

The Applicant requests that the requirement to make the determination of a legally created parcel be included as a condition of the site certificate.

SECTION 3.210(E). Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses may be permitted on a legal parcel on lands designated “A-1” Exclusive Farm Use subject to the Subsection F – Property Development Standards, H – Agricultural Protection, Chapter 5 – Conditional Use Review, Chapter 10 – Fire Safety Standards, Chapter 20 – Site Plan Review only if the request includes off-street parking, off-street loading or bicycle parking, as well as any other listed, referenced, or applicable standards.
RESOURCES USES

4. Aggregate: Operations conducted for the mining, crushing or stockpiling of mineral, aggregate and other subsurface resources subject to Section J(9), Additional Standards below, Section 3.800, Mineral & Aggregate Overlay.

5. Processing, as defined by ORS 517.750, of aggregate into asphalt or Portland cement, except that asphalt production shall not be permitted within two miles of a producing orchard or vineyard, which is planted as of the date that the application for asphalt production is filed, and subject to WCLUDO Section 3.800, Mineral and Aggregate Overlay.

Response: Rock for construction purposes will be sourced from permitted quarries. Associated rock-crushing activities will occur at the quarry before transporting to the site.

ENERGY/UTILITY/SOLID WASTE DISPOSAL FACILITIES

14. Commercial Power Generating Facility (Utility Facility for the Purpose of Generating Power) subject to Section 19.030. Except for wind facilities, transmission lines or pipelines, unless otherwise allowed by state regulations, the energy facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4, or 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4 and ORS 197.732.

Response: With the exception of the 230-kV transmission line and upgrades to existing public roads, both of which are allowed outright, the Facility and its related or supporting facilities qualify as a “wind power generation facility,” which is a type of “commercial utility facility.” These components of the Facility are subject to the general conditional use criteria and the specific wind power generation criteria.

Section 3.210(F). Property Development Standards. Property development standards are designed to preserve and protect the character and integrity of agricultural lands, and minimize potential conflicts between agricultural operations and adjoining property owners. A variance subject to WCLUDO Chapter 6, or Chapter 7 may be utilized to alleviate an exceptional or extraordinary circumstances that would otherwise preclude the parcel from being utilized. A variance to these standards is not to be used to achieve a preferential siting that could otherwise be achieved by adherence to these prescribed standards.

1. Setbacks

   a. Property Line

      (1) All dwellings (farm and non farm) and accessory structures not in conjunction with farm use, shall comply with the following property line setback requirements:

         (a) If adjacent land is being used for perennial or annual crops, the setback shall be a minimum of 200 feet from the property line.

         (b) If adjacent land is being used for grazing, is zoned Exclusive Farm Use and has never been cultivated or is zoned F-1 or F-2, the setback shall be a minimum of 100 feet from the property line.

         (c) If the adjacent land is not in agricultural production and not designated Exclusive Farm Use, F-1 or F-2, the setback shall be a minimum 25 Feet from the property line.
(d) If any of the setbacks listed above conflict with the Sensitive Wildlife Habitat Overlay the following shall apply and no variance shall be required:

i. The structure shall be set back a minimum of 25 feet from the road right of way or easement;

ii. The structure shall be located within 300 feet of the road right of way or easement pursuant Section 3.920(F)(2), Siting Standards; and

iii. As part of the application the applicant shall document how they are siting the structure(s) to minimize impacts to adjacent agricultural uses to the greatest extent practicable.

Response: Land adjacent to the analysis area is currently being used for perennial or annual crops. Therefore, the proposed Facility is subject to the 200-foot setback described in Section 3.210(F)(1)(a)(1)(a). All aboveground elements of the Facility will be located at least 200 feet from the property lines as required by this section.

The statewide planning goal that is applicable to the turbine setbacks is Goal 3 (Agricultural Lands). Goal 3 provides that “agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy.” OAR 660-033-0130(37) allows wind power generation facilities on agricultural lands subject to Goal 3 without a goal exception.

Wasco County has directly implemented the OAR 660-033-0130(37) rules at WCLUDO Section 3.210(J)(17). Because the Facility satisfies these criteria, it is also consistent with Goal 3. In sum, the Application satisfies this standard.

No part of the proposed Facility site is located within the Sensitive Wildlife Habitat Overlay. Therefore, the requirements of section (d) do not apply.

b. Waterways:

(1) Resource Buffers: All bottoms of foundations of permanent structures, or similar permanent fixtures shall be setback from the high water line or mark, along all streams, lakes rivers, or wetlands.

(a) A minimum distance of one hundred (100) feet when measured horizontally at a right angle for all waterbodies designated as fish bearing by any federal, state or local inventory.

(b) A minimum distance of fifty (50) feet when measured horizontally at a right angle for all waterbodies designated as non fish bearing by any federal, state or local inventory.

(c) A minimum distance of twenty five (25) feet when measured horizontally at a right angle for all waterbodies (seasonal or permanent) not identified on any federal, state or local inventory.

(d) If the proposal does not meet these standards it shall be subject to Section (a)(3), Additions or Modifications to Existing Structures, above.
(e) The following uses are not required to meet the waterway setbacks, however they must be sited, designed and constructed to minimize intrusion into the riparian area to the greatest extent possible:

(i) Fences;

(ii) Streets, roads, and paths;

(iii) Drainage facilities, utilities, and irrigation pumps;

(iv) Water-related and water-dependent uses such as docks and bridges;

(v) Forest practices regulated by the Oregon Forest Practices Act;

(vi) Agricultural activities and farming practices, not including the construction of buildings, structures or impervious surfaces;

and

(vii) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

Response: Exhibit J contains a study of waterways located within the analysis area. As proposed, no foundations or permanent structures will be located within 100 feet of the waterways. The proposed 230-kV transmission line is not subject to the setback requirements of this section because it is considered a utility pursuant to subsection (iii) and allowed outright under state law. The proposed access roads are not subject to the setback requirements of this section pursuant to subsection (ii).

(2) Floodplain: Any development including but not limited to buildings, structures or excavation, proposed within a FEMA designated flood zone, or sited in an area where the Planning Director cannot deem the development reasonably safe from flooding shall be subject to Section 3.740, Flood Hazard Overlay.

Response: The Federal Emergency Management Agency (FEMA) has issued a Flood Insurance Rate Map for Wasco County, which shows that the majority of the County is located in Zone C, Area of Minimal Flooding. Within Wasco County, small areas are designated Zone A, 100-Year Floodplain. No development is proposed in those areas. Figure K-2 shows the 100-year floodplain.

c. Irrigation Ditches:

All dwellings and structures shall be located outside of the easement of any irrigation or water district. In the absence of an easement, all dwellings and structures shall be located a minimum of 50 feet from the centerline of irrigation ditches and pipelines which continue past the subject parcel to provide water to other property owners. Substandard setbacks must receive prior approval from the affected irrigation district. These setbacks do not apply to fences and signs.

Response: The Facility does not include development within 50 feet of the centerline of any irrigation ditches that continues past the subject parcel to provide water to other property owners.
2. **Height:** Except for those uses allowed by Section 4.070, General Exception to Building Height Requirements, no building or structure shall exceed a height of 35 feet. Height is measured from average grade.

**Response:** This section applies to those proposed structures that are not subject to WCLUDO Section 4.070. Section 4.070 allows energy facilities and commercial energy facilities to be erected above the height limit of the zone in which they are located, provided that no usable floor space is constructed in such structures above the stated height limits. None of the structures proposed to exceed the stated height limit, including turbine and transmission towers, provide any usable floor space above a height of 35 feet. Therefore, these structures are subject to compliance with Section 4.070.

The proposed O&M building is the only structure proposed to provide usable floor space. As proposed, this structure will comprise a single story that will not exceed 15 feet in height.

4. **Signs:**
   a. **Permanent signs shall not project beyond the property line.**
   b. **Signs shall not be illuminated or capable of movement.**
   c. **Permanent signs shall describe only uses permitted and conducted on the property on which the sign is located.**
   d. **Size and Height of Permanent Signs:**
      (1) Freestanding signs shall be limited to twelve square feet in area and 8 feet in height measured from natural grade.
      (2) Signs on buildings are permitted in a ratio of one square foot of sign area to each linear foot of building frontage but in no event shall exceed 32 square feet and shall not project above the building.
   e. **Number of permanent signs:**
      (1) Freestanding signs shall be limited to one at the entrance of the property. Up to one additional sign may be placed in each direction of vehicular traffic running parallel to the property if they are more than 750 feet from the entrance of the property.
      (2) Signs on buildings shall be limited to one per building and only allowed on buildings conducting the use being advertised.
   f. **Temporary signs such as signs advertising the sale or rental of the premise are permitted provided the sign is erected no closer than ten feet from the public road right-of-way.**

**Response:** The only signs proposed are safety signs and signs marking Facility components. These signs are not proposed to exceed the size limitations or violate locational requirements established in this section.

5. **Lighting:** Outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways and waterways. Shielding and hooding materials shall be composed of nonreflective, opaque materials.
Response: The O&M building site will be lighted; exterior lighting will be directed downward to limit glare and light pollution. Turbines and other components of the proposed Facility will only be lit as required by the Federal Aviation Administration (FAA). Any applicable outdoor lighting will comply with required County criteria.

6. Parking - Off street parking shall be provided in accordance with Chapter 20.

Response: There are no buildings associated with the Facility in Wasco County that will require off-street parking. Therefore, this criterion is not applicable.

7. New Driveways: All new driveways and increases or changes of use for existing driveways which access a public road shall obtain a Road Approach Permit from the appropriate jurisdiction, either the Wasco County Public Works Department or the Oregon Dept. of Transportation.

Response: The proposed Facility will take access from existing private roads. No changes to driveways accessing private roads are proposed.

Section 3.210(H). Agricultural Protection. The uses listed in Section D, Uses Allowed Subject to Standards and E, Conditional Uses must meet the following standards:

1. Farm-Forest Management Easement: The landowner is required to sign and record in the deed records for the county a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or case of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

2. Protection for Generally Accepted Farming and Forestry Practices – Complaint and Mediation Process: The landowner will receive a copy of this document.

Response: The Applicant will comply with WCLUDO 3.210(H)(1) and 3.210(H)(2) as required.

Section 3.210(J). Additional Standards.

8. Utility Facility:

a. A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(1) Technical and engineering feasibility;

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

(3) Lack of available urban and nonresource lands;

(4) Availability of existing rights of way;

(5) Public health and safety; and
(6) Other requirements of state and federal agencies.

b. Costs associated with any of the factors listed in a. may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

Response: WCLUDO Section 3.210(J)(8) directly implements ORS 215.275, which establishes the statutory criteria for determining whether a utility facility located on EFU land is “necessary for public service.” These criteria apply to the 230-kV transmission line that is proposed to serve the Facility; the remainder of the proposed Facility is considered a “wind power generation facility,” which is subject to the provisions in WCLUDO 3.210(J)(17).

ORS 215.275(2) and WCLUDO Section 3.210(J)(8)(a) include six criteria for determining whether a utility facility is necessary for public service; a utility facility must meet at least one of these criteria in order to be considered “necessary for public service.” The proposed 230-kV transmission line satisfies at least four of these criteria, as described directly below.

The majority of land in Wasco County that is located outside of an urban growth boundary is designated EFU. Neither urban nor nonresource land is available to accommodate the proposed 230-kV transmission line. The principal components (turbines) and related or supporting facilities are proposed to be located on land designated EFU. The 230-kV line must be located in the vicinity of the turbine strings and interconnection point in order to transfer energy to the electrical grid. Alternative urban or nonresource sites are not available to accommodate these locational needs. Therefore, the Facility satisfies criterion 3 (lack of available urban or nonresource land).

Because the location of the Facility on EFU land requires that the transmission line serving such a facility be located on EFU land as well, the location of the proposed transmission line also satisfies criterion 1 (technical and engineering feasibility) and 2 (locational dependency). Finally, the proposed location of the transmission line also satisfies criterion 5 (public health and safety). The Facility is proposed to be located away from populated areas.

The Applicant selected the proposed route after determining that no other route would better meet the Applicant’s own criteria for successful siting and at the same time satisfy the Council’s standards. Siting criteria that influenced the Applicant’s selection process included identifying a direct route from the proposed turbines to the interconnection point at the Buckley substation while minimizing disturbance and avoiding sensitive resources; minimizing impacts to agricultural practices by routing along property lines; navigating difficult and varied topography; and locating the route through land for which the Applicant has negotiated or is in the process of negotiating long-term wind leases or easements.

As an alternative to the proposed 230-kV overhead line, the Applicant considered various alternative design scenarios, including removing the 230-kV overhead line between the northern and southern Facility collector substations, and even removing the southern substation, to reduce the overall length of the 230-kV transmission line to 20 miles and limit the 230-kV line to one county. If such an alternative design were proposed, under ORS 469.300, the transmission line would not be considered an energy facility, and would not be reviewable under this application requirement. However, the length of overhead 34.5-kV lines within the Facility site boundary would substantially increase, creating additional disturbance to the resources identified in OAR 345-021-0010(1)(b)(D)(i-vii) and potentially creating significant additional visual impacts.
c. The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

Response: Exhibits I (Section I.5.3) and P (Section P.8.4) in the Application describe the restoration actions the Applicant proposes to comply with this criteria, including backfilling disturbed areas with native soil and returning those areas to original grade.

d. The governing body of the County or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farm lands.

Response: Construction of the 230-kV transmission line will not have a substantial impact on EFU land. Only a small percentage of the permanent impacts to EFU lands are from the transmission line. As explained below in response to WCLUDO 5.020(J) and (K), locating the Facility, including the transmission line, on agricultural land will not cause a significant change in accepted farm practices or significantly increase the cost of farm practices on surrounding lands.

17. Wind Power Generation Facility: For purposes of this section a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances.

a. For high-value farmland soils described in ORS 195.300(10), it must be found that all of the following are satisfied:

(1) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

   (a) Technical and engineering feasibility;

   (b) Availability of existing rights of way; and

   (c) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (2) of this subsection.

(2) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof 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 on other agricultural lands that do not include high-value farmland soils.

(3) Costs associated with any of the factors listed in paragraph (1) of this subsection may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(4) The owner of a wind power generation facility approved under Section (a) above shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The criteria in Section (b), below are satisfied.

Response: There is no high-value farmland within the site boundary in Wasco County. Accordingly, these criteria do not apply.

b. For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described in ORS 195.300(10), it must be found that:

(1) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

Response: Of the 51,569 acres within the site boundary in Wasco County, 39,627 acres are nonarable and 11,943 are arable. The Facility is consistent with the purpose of Wasco County’s EFU zone, including agricultural operations. To the extent feasible (and in consultation with the owners and operators), Facility components will be placed on the margins of cultivated areas to reduce potential conflict with farm operations and existing roads will be used by the Facility to minimize the need to construct new roads. Where new roads are required, the Applicant will try to locate the roads in the margins of cultivated areas near turbines and transmission interconnection lines. The improved and new roads will actually enhance access by land managers and farmers to the fields, and during construction, the Applicant will provide access across construction trenches to fields as needed.

(2) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

Response: The Applicant will obtain an NPDES 1200-C permit, which requires the implementation of an erosion and sediment control plan and the use of best management practices to minimize the potential for erosion. Best management practices will include but will not be limited to, using hay bales or other
similar forms of containment, watering to prevent windblown erosion in disturbed areas, and revegetation. Further, to minimize soil exposure during installation of collector lines, the Applicant will attempt to only open as much trench in one day as can be excavated and backfilled, and in no case will a trench remain open more than 7 days, as allowed by the 1200-C permit. Staging areas will need to be stripped and the soil stockpiled before gravel is placed. The stockpiling will occur during the time of year when rainfall is the lowest, and consequently very little erosion is likely to result. The Applicant will apply best available practices to prevent weed infestation and erosion of the stockpiled soils, developed in consultation with the landowners and the local weed control authority. Measures will be taken during Facility construction to minimize erosion and disturbed areas will be restored upon the completion of construction, including regrading the staging areas to original contours and replanting.

(3) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

Response: To the extent possible, the Facility will use existing roads and Facility components (such as turbine pads and new access roads) will be located in the margins of agricultural fields. Staging areas used during construction will be rehabilitated and made available for agricultural and wildlife use. Rehabilitation will address soil compaction if needed to ensure that the area is again productive for agricultural use. Any needed rehabilitation measures will be coordinated closely with farm operators to restore soils. Therefore, the likelihood of soil compaction during construction or operation that would affect ongoing farming operations is small. Further, as discussed in Exhibit W, the Facility will be decommissioned and the site will be restored. To the extent necessary, the certificate holder will restore compacted soils to farmable condition. Accordingly, construction or maintenance activities will not result in unnecessarily soil compaction that reduces the productivity of soil for crop production.

(4) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

Response: The Applicant has drafted a weed management plan to prevent the establishment of weeds (see Attachment I-3 to Exhibit I). The plan will be completed in consultation with Wasco County and will likely include measures to clear weeds through a combination of burning (if possible), spraying, and mowing plus planting of a native grass seed mix (certified weed free) with a no-till drill in the fall. The Applicant will be responsible for weed management during construction and operation. For these reasons, and the reasons already set forth in the Application, the Applicant can demonstrate that adequate measures will be undertaken to ensure that the construction or maintenance activities will not result in the spread of noxious weeds during Facility construction and operation.

c. For nonarable lands, meaning lands that are not suitable for cultivation, it must be found that the requirements of Subsection (b)(4) above are satisfied.

Response: Of the 51,569 acres within the site boundary in Wasco County, 39,627 acres are nonarable and 11,943 are arable. Because the Facility is proposed on a combination of arable and nonarable lands, the approval criteria of Section (b) apply to the entire project. Compliance with Section (b) is discussed above.
d. In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in Sections (b) and (d) above, the approval criteria of Section (b) shall apply to the entire project.

Response: Of the 51,569 acres within the site boundary in Wasco County, 39,627 acres are nonarable and 11,943 acres are arable. Because the Facility is proposed on a combination of arable and nonarable lands, the approval criteria of Section (b) apply to the entire project. Compliance with Section (b) is discussed above.

SECTION 3.700 Environmental Protection District

The purpose of the Environmental Protection District is to permit the regulation of environmental hazards, the qualifications of lands for floodplain insurance programs and preferential taxation assessment, the preservation of sensitive wildlife habitats and unique areas of scientific and aesthetic value, and the protection of the health, safety, and welfare of residents of Wasco County.

SECTION 3.750 Division 2 – Geologic Hazards Overlay

The purpose of the Geologic Hazards Overlay District is to protect the public health, safety and welfare by assuring that development in hazardous or potential hazardous areas is appropriately planned to mitigate the threat to man’s life and property.

B. Approval Standards: Prior to development, the following measures shall be utilized:

1. Any proposed developments on slopes greater than twenty-five percent (25%) shall be reviewed to ensure site suitability. Such review shall be conducted in the process for building permit approval and, unless the site has been identified as a geologic hazard area, shall rely on provisions of the Uniform Building Code for the protection of the public health, safety and welfare.

Response: As discussed in Exhibit H (Section H.6), the Applicant will conduct appropriate site-specific geotechnical evaluation before construction to identify and avoid geological hazards.

2. Any proposed development in an identified geologic hazard area shall be preceded by a written report by an engineering geologist or an engineer who certifies he is qualified to evaluate soils for suitability. For purposes of this section, development shall include any excavation or change in topography, such as home construction, associated roads, driveways, septic tank disposal fields, wells and water tanks. The written report of the engineering geologist or engineer shall certify that the development proposed may be completed without threat to public safety or welfare and shall be used in ministerially reviewing the development proposal.

Response: As noted above and detailed in Exhibit H, the Applicant will conduct appropriate site-specific geotechnical evaluation before construction to identify and avoid geological hazards. This geotechnical evaluation will be sent to ODOE for their consideration. This evaluation will help ensure that the Facility can be completed without threat to public safety or welfare.

3. In approval of a development permit, whether ministerial or through the Administrative Action procedures of Chapter 2 of this Ordinance, the following conditions may be imposed at the time of approval to ensure site and area stability:

19 Applicant is currently in consultation with ODFW regarding potential impacts within the Natural Areas Overlay District; specifically within the Black Rock Rotten Lake Basin Area and Hollow Creek Area per comment received from Wasco County Planning Department.
a. Maintain vegetation and eliminate widespread destruction of vegetation.

b. Carefully design new roads and buildings with respect to:
   (1) placement of roads and structures on the surface topography.
   (2) surface drainage on and around the site.
   (3) drainage from buildings and road surfaces.
   (4) placement of septic tank disposal fields.

c. Careful construction of roads and buildings.
   (1) avoid cutting toeslopes of slump blocks.
   (2) careful grading around the site, especially avoiding over-steepened cut banks.
   (3) re-vegetating disturbed areas as soon as possible.

d. Other conditions may be imposed to reasonably assure that the development is protected from damage by mass movement.

Response: The Applicant has elected to pursue Council rather than County approval and will therefore adhere to the conditions set forth in the site certificate. These conditions will help ensure site and area stability.

SECTION 3.800 Division 5 – Mineral and Aggregate Overlay

Purpose: The purpose and intent of the Mineral and Aggregate Overlay Zone is:

1. To allow the development and use of mineral and aggregate resources;
2. To provide uniform standards for extraction and processing of mineral and aggregate resources;
3. To balance conflicts between mining operations and new and existing surrounding conflicting uses;
4. To ensure the rehabilitation and restoration of mining sites; and
5. To protect mineral and aggregate resources for future use consistent with Comprehensive Plan goals and policies and Statewide Planning Goal 5.

Response: Rock for construction purposes will be obtained from permitted quarries. Associated rock-crushing activities will occur at the quarry before transporting to the site. Facility components will be sited to protect designated Goal 5 mineral and aggregate resources (shown on Figure K-2), including ODOT Site Number 204, for future use consistent with the WCCP.

SECTION 3.910 Division 7 – Natural Areas Overlay

B. Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.
**Response:** The proposed Facility is within the A-1 zoning district in Wasco County, which allows wind development as a conditional use. The Facility site boundary overlaps with the Natural Areas Overlay in two locations: at the Hollow Creek Area at the southern Facility site boundary and the Black Rock Rotten Lake Basin to the east. The underlying zone at both of these locations is A-1, and therefore this criterion is met.

**C. Approval Standards:** In the evaluation of any use subject to the Natural Areas Overlay, findings shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.

**Response:** While the Facility site boundary extends into portions of the Hollow Creek Area and the Black Rock Rotten Lake Basin in the Natural Areas Overlay, no Facility components (e.g., turbines, transmission line poles, O&M building, roads) are proposed to be developed within these areas. The designated natural value for the two areas within the Natural Areas Overlay that are crossed by the Facility site boundary are indicated in Table 11A of the Wasco County Comprehensive Plan, as discussed in the paragraphs below.

Two golden eagle nests are identified in the Comprehensive Plan as being located within the Hollow Creek Area. The nearest Facility development is located approximately one-half mile from the Hollow Creek Area. As there are no proposed activities within the Hollow Creek Area, the Facility is not expected to disturb the nesting golden eagles and will not result in permanent destruction of the Hollow Creek Area’s natural value.

The noted natural value for the Black Rock Rotten Lake Basin Area in the Comprehensive Plan includes golden eagle habitat, a permanent lake, a lowland pond, geologic features, and paleontological features. The nearest Facility development is located approximately one-half mile from the Black Rock Rotten Lake Basin Area. As there are no proposed activities within the Black Rock Rotten Basin Area, the Facility is not expected to affect golden eagle habitat and will not result in permanent destruction of the Rock Rotten Basin Area’s natural value.

**Chapter 4 – Supplemental Provisions**

**SECTION 4.070 General Exceptions to Building Height Requirements**

Necessary roof structures housing elevators, stairways, tanks, fans and ventilators and towers, steeples, flagpoles, smokestacks, silos, grain elevators, uses specified in Chapter 19 – Energy Facilities (meteorological towers, transmission towers and lines, and commercial, net-metering, and non-commercial/stand alone power generating facilities), communication towers, water tanks and skylights and fire or parapet walls may be erected above the height limits of the zone in which they are located provided no usable floor space is provided in such structures above the required height limits. All structures over 200 feet in height require a Conditional Use Permit for aviation safety.

**Response:** The only building to be constructed is the O&M building, which will be a single-story structure that will not exceed 15 feet in height. The other structural components of the Facility are exempt from the height standards because no usable floor space is provided.

**SECTION 4.140 Traffic Impact Analysis (TIA)**

A. **Purpose** - The purpose of this section of the code is to implement Section 660-012-0045 (2) (e) of the State Transportation Planning Rule that requires the County to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This section establishes the standards for when a proposal must be
reviewed for potential traffic impacts; when a Traffic Impact Analysis must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a Traffic Impact Analysis; and who is qualified to prepare the Study.

B. Typical Average Daily Trips - The latest edition of the Trip Generation Report, published by the Institute of Transportation Engineers (ITE), or a source deemed acceptable to the City Engineer through the pre-application process (Section 4.140(D)(3)) shall be used to gauge the trip generation potential of future development.

C. When Required - A Traffic Impact Analysis shall be required to be submitted to the County with a land use application when the following conditions apply:

1. The development application involves one or more of the following actions:
   a. A change in zoning or a plan amendment designation; or
   b. Any proposed development or land use action that ODOT states may result in operational or safety concerns along a state highway; and
   c. The development shall cause one or more of the following effects, which can be determined by field counts, site observation, traffic impact analysis or study, field measurements, crash history, Institute of Transportation Engineers Trip Generation manual; and information and studies provided by the local reviewing jurisdiction and/or ODOT:
      (1) An increase in site traffic volume generation by 200 Average Daily Trips (ADT) or more (or as required by the Wasco County Roadmaster); or
      (2) An increase in intersection traffic volume by 50 Average Daily Trips (ADT) or more (or as required by the Wasco County Roadmaster); or
      (3) An increase in use of adjacent roads by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day; or
      (4) The location of the access driveway does not meet minimum intersection sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the adjacent roadway, creating a safety hazard; or
      (5) The location of the access driveway does not meet the access spacing standard of the roadway on which the driveway is located; or
      (6) A change in internal traffic patterns that may cause safety problems, such as back up onto the roadway or traffic crashes in the approach area.

Response: The Facility will not create any of the situations listed in 4.140(C) that would result in significant changes to traffic patterns in the County. Therefore, a Traffic Impact Analysis is not required for this Application.
Chapter 5—Conditional Use Review

SECTION 5.020 Authorization to Grant or Deny Conditional Uses, and Standards and Criteria used

Conditional uses listed in this Ordinance shall be permitted, enlarged or otherwise altered or denied upon authorization by Administrative Action in accordance with the procedures set forth in Chapter 2 of this Ordinance. In judging whether or not a conditional use proposal shall be approved or denied, the Administrative Authority shall weigh the proposal’s appropriateness and desirability or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed, and to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable.

Response: With the exception of the 230-kV transmission line (permitted outright) and improvements to existing public roads (permitted without review), all Facility components are subject to the following conditional use criteria.

A. The proposal is consistent with the goals and objectives of the Comprehensive Plan and implementing Ordinances of the County.

Response: The applicable WCCP provisions are discussed below. Consistency with the County’s implementing ordinances is evaluated throughout this section.

B. Taking into account location, size, design and operational characteristics of the proposed use, the proposal is compatible with the surrounding area and development of abutting properties by outright permitted uses.

Response: As proposed, the Facility will result in little to no impact to existing agricultural operations in the area and will not materially alter the stability of the area’s existing land use pattern. Adjacent uses are primarily agricultural, including the county’s principal products: cereal grains, sweet cherries, apples, and livestock. Wheat is the dominant field crop on the 190,000 acres of nonirrigated cropland in the County, while of the 38,000 acres that are irrigated, sweet cherries are the dominant field crop. Local farmers will be able to maneuver around the turbine and transmission towers and across the gravel access roads. Any financial impacts on the affected farmers resulting from removal of lands from farm production will be offset by the lease payments they will receive for use of their land to site the Facility.

C. The proposed use will not exceed or significantly burden public facilities and services available to the area, including, but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities.

Response: Exhibit U identifies the public services and utility providers within a 10-mile radius of the Facility. No sewer or sewage treatment providers offer service to the site. Water will be brought to the site by water trucks during construction and obtained from an existing or new onsite well during operations. Construction of a new well will not require a new water right, as the water usage will be less than 5,000 gallons per day. Therefore, there will be no burden on sewer or water providers.

The Facility will be constructed with its own stormwater management systems, which will remove any burden from local providers. Solid waste disposal for the Facility will also be provided by private contract with a local commercial hauler, likely to the nearest public landfill, which is the Wasco County Landfill in The Dalles, Oregon.

Housing will not be affected within the Facility vicinity because supply is adequate (see Exhibit U.5.6), and only 20 to 25 people will be permanently employed by the Facility. The housing supply can accommodate
these workers and their families. Likewise, there is adequate temporary housing for construction workers who need to be brought in from outside of the area. This temporary housing also includes up to 50 hotel rooms and possibly a 20-spot RV park in Maupin. Hospitals and schools nearby will also not be affected by the Facility given the relatively small amount of people employed.

Police and fire protection have already been requested from local departments. The Wasco County Sheriff’s Office provided a letter indicating that they have jurisdiction over the part of the Facility located within Wasco County, and that the Facility will not create an additional burden on the ability of the Sheriff’s Office to provide police protection (see Exhibit U, Attachment U-1). The Oregon State Fire Marshal indicated that the Facility is not within the jurisdiction of a local fire protection district, though the Marshal provided fire safety recommendations for the Applicant to follow (see Attachment K-1). Federal and state agencies including the U.S. Forest Service, BLM, and Oregon Department of Forestry provide fire suppression. The Applicant continues to work with Wasco County on the development of a fire suppression/wildfire management plan. The plan will be completed and submitted to ODOE before the start of construction.

During construction, highways, County roads, and private access roads will be used to access the site. The Applicant will use several public roads during Facility construction and operation and, where necessary, improve the roadbed to accommodate construction equipment. The improvements will benefit Wasco County because the Applicant will bear the cost and the improved roads will be available for public use. An improved road system will also provide better access for emergency vehicles.

Construction-related traffic may cause some short-term delays when deliveries of large components occur. Delays will be temporary in nature and, given that the existing traffic on most roads in the Facility vicinity is sparse and generally limited to area residences and farmers, impacts related to construction will be minimal. During operation, the Facility will employ 20 to 25 people and will contribute very little traffic to the local road system.

D. **The proposed use will not unduly impair traffic flow or safety in the area.**

**Response:** As described in response to criterion (C), construction-related traffic may cause some short-term delays when components of the Facility, such as turbine nacelles and towers, are delivered to the staging areas. These delays will be temporary and will not have any permanent adverse impact on traffic flow or safety. Indeed, with the proposed road improvements, travel along County roads will be safer after the Facility-related improvements are completed.

The Facility will not have any significant permanent impacts on traffic flow or safety because it will employ only a limited number of people, not all of whom will travel to the Facility at the same time.

E. **The effects of noise, dust and odor will be minimized during all phases of development and operation for the protection of adjoining properties.**

**Response:** Exhibit X provides the results of a noise analysis for the Facility. This analysis concludes that applicable DEQ noise regulations will be met for Facility construction and operation, including compliance with the 50-dBA limit for noise-sensitive receptors. When a precise turbine layout has been selected and before construction, the Applicant will submit a site-specific acoustical analysis (as required by the DEQ noise regulations) using the same methodology as the analysis conducted for Exhibit X. The Applicant will also submit evidence of secured noise easements for any sensitive receptors.

As explained in Exhibit I, the Applicant will obtain an NPDES 1200-C permit, which requires the development and implementation of an erosion and sediment control plan and the use of best management practices to minimize the potential for erosion, including windblown erosion. The Applicant
will also apply best available practice to prevent weed infestation and erosion of the stockpiled soils, developed in consultation with the landowners and the Wasco County weed authority.

F.  The proposed use will not significantly reduce or impair sensitive wildlife habitat, riparian vegetation along streambanks and will not subject areas to excessive soil erosion.

Response: The Facility will be located to avoid affecting streambank areas or other areas of riparian vegetation. Exhibits P and Q identify specific fish and wildlife resources, including state and federally listed species in the area, and any potential impacts to those resources. Those Exhibits establish that the Facility is not expected to significantly affect any listed endangered or threatened species or adversely affect fish and wildlife species or habitat.

Exhibit P (Section P.6) identifies and categorizes fish and wildlife habitat within the habitat analysis area. There are no Category 1 or 5 habitats in the analysis area. The bulk of the habitat is in Categories 3, 4, and 6. Approximately 75 percent of the permanent impacts will occur to Category 3 rangeland (consisting of shrub-steppe and biscuit scabland) and 17 percent will occur to Category 6 agricultural and developed habitats. Similarly, temporary impacts will occur primarily to Category 3 habitat, accounting for approximately 78 percent of the temporary impact to habitat areas. A monitoring plan will be developed in coordination with ODFW to evaluate actual Facility impacts.

As described in Exhibit J (Section J.4), 37 wetlands and 24 streams were identified during the field investigation. These wetland and aquatic habitat features do not provide habitat for any listed endangered or threatened fish or wildlife species and no impacts are expected to fish and wildlife or their associated habitat.

Exhibit J (Section J.5) identifies two wetlands and eight streams that will be permanently or temporarily affected by the Facility within the study area, primarily from the proposed access roads and underground collector lines. Access road crossing impacts will include excavation of channel bed material, culvert placement, and rock and gravel fill placement over the culvert to create a roadbed. Culverts will be adequately sized to pass anticipated storm flows. Riprap will be placed at the culvert ends for erosion control. Total in-channel impacts to streams and wetlands for permanent and temporary impacts will be approximately 177 cubic yards of removal and 566 cubic yards of fill (0.08 acre) and will affect 258 feet of stream length.

The Applicant will obtain an NPDES 1200-C permit that will limit erosion by applying best management practices to reduce erosion potential.

G.  The proposed use will not adversely affect the air, water, or land resource quality of the area.

Response: The Facility will have little impact on air, water, and land resources. The Facility will not create a new pollution source, and, as previously discussed, traffic will be minimal. The Facility will not significantly increase the amount of exposed soils in the site area and will have little or no impact on air quality. As explained in Exhibit P (Section P.8.3), any soils exposed during construction will be revegetated to prevent soil erosion from wind and rain. Moreover, Facility construction will be conducted pursuant to a DEQ-issued NPDES 1200-C permit, which requires best management practices to minimize the potential for erosion.

Temporary impacts to land within the site area will occur with the creation of staging areas and the excavation for underground collector lines. To minimize soil exposure during installation of the collector lines, the Facility will open only as much trench in a day as can be excavated and backfilled; in no case will a trench remain open for more than the 7 days allowed by the NPDES 1200-C permit. Establishing the staging areas will involve stripping and temporarily stockpiling topsoil before placing gravel on the area. In
actively farmed areas, the crops will protect the stockpiles from wind erosion. In other areas, hay bales or other containment features will be used. As needed, water from trucks will be sprayed on disturbed areas to keep wind-borne erosion losses to a minimum. After the need for the staging areas ends, the staging areas will be brought back to their original contours, topsoil spread in those areas, and the areas revegetated or prepared for planting.

The O&M building will be served by an onsite well. No permit is required to draw from this well because Oregon allows the withdrawal of up to 5,000 gallons per day without a permit and the Facility will use less than 5,000 gallons per day. Wastewater generated onsite will be limited to the O&M building, which will be connected to a DEQ-approved onsite septic system. No industrial wastewater will be generated during operations. As discussed above, there will be no impacts to wetlands or other water sources from the O&M building.

Permanent impacts to land resources will affect approximately 252 acres of EFU land in both counties. The amount of land used for the proposed Facility is a very small percentage of land within the analysis area, and Facility components will be located in a fashion that minimizes impacts to existing farming operations. The Applicant has also prepared a weed management plan to address the requirements of the Soil Protection standard (see Attachment I-3 to Exhibit I).

H. The location and design of the site and structures for the proposed use will not significantly detract from the visual character of the area.

Response: Exhibit R (Section R.4) describes the potential impacts to scenic and aesthetic resources. Exhibit T (Section T.3) describes the potential impacts to recreational opportunity areas. An analysis was completed to determine where the Facility components will be visible from these resources. Analysis results in Exhibit R (Section R.8) and Exhibit T (Section T.7) indicate that the Facility will not cause significant adverse impacts to scenic resources. The Facility will potentially be visible from three scenic resources within the analysis area: John Day Fossil Beds National Monument, John Day River and Canyon, and County-designated scenic highways. Visibility of the turbines and parts of the 230-kV transmission line will be limited from these three resources. Turbines and the transmission line will not be dominant visual elements on the landscape, and they will likely not attract the attention of casual observers. Lights on the turbines may be visible from the John Day Fossil Bed National Monument, but since the Monument is only open during daylight hours, potential impacts will be less than significant. The Applicant has minimized any impacts to these scenic and recreational resources through Facility design.

I. The proposal will preserve areas of historic value, natural or cultural significance, including archaeological sites, or assets of particular interest to the community.

Response: Exhibit S (Sections S.5, S.6 and S.7) identifies existing cultural and historic resources in the analysis area and the potential impacts on those resources associated with Facility construction. The Applicant recorded a total of 63 archaeological sites within the analysis area, including 32 historic sites, 20 prehistoric era sites, and 11 stacked rock features of undetermined antiquity. None of the sites is listed on the NRHP. Fifty-six (56) sites have been preliminarily assessed as potentially eligible for listing on the NRHP. Seven sites have been preliminarily assessed as not eligible for listing on the NRHP. The Applicant will site Facility components in such a way as to avoid direct impacts to historic, cultural, and archaeological resources identified as eligible or potentially eligible for listing on the NRHP. The Applicant proposes to identify these sites on Facility construction maps as no-entry areas, and to flag a 200-foot buffer around precontact and unknown sites, and a 100-foot buffer around historic archaeological sites, prior to construction to prevent inadvertent impacts during construction activities. An Unanticipated Discovery Plan is included with the limited-distribution Cultural Resources Report in Exhibit S and monitoring is proposed if construction occurs within buffer areas.
The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to or available for farm and forest use. (Revised 1-92)

Response: The Facility is located in an area where the predominant land uses are agriculture. The main agricultural products of the area include wheat (which is grown on the majority of the agricultural land), cherries, and livestock. Wheat is planted in the fall, left to grow throughout the winter, and harvested in late summer. Livestock consumes grasses year-round in rotating fields, including consuming the remnants of the summer wheat harvest. There are no forest operations in the analysis area. Construction of the Facility is not anticipated to substantially increase the cost of farming and grazing operations because the Facility components, such as the turbines and access roads, will be located to limit, to the greatest extent practicable, changes in planting and harvesting patterns. Likewise, livestock can reasonably be assumed to ignore wind turbines and continue grazing in normal patterns around wind turbines.

The Facility is also not expected to increase the cost of accepted farming practices on surrounding lands outside of the analysis area because no construction will occur on those sites, and Facility operation will not affect farm practices on surrounding land. Any financial impacts on the affected farmers resulting from removal of lands from farm production will be offset by the lease payments those farmers will receive for use of their land.

The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm or forest use.

Response: Facility construction and operation will be compatible with existing farming and grazing operations and will not significantly alter accepted farming practices. Some minor changes in sowing and harvesting patterns in the immediate vicinity of the turbine strings will likely be necessary, but those affected farmers will be able to maneuver around the turbine and transmission towers and across the gravel access roads. In addition, gravel access roads will be available for the farmers to move equipment. The Facility will not affect any forest practices because there are no forest operations in the vicinity.

SECTION 5.030 CONDITIONS

Response: The Applicant has elected to pursue Council rather than County approval and will therefore adhere to the conditions set forth in the site certificate.

SECTION 5.040 REVOCATION OF CONDITIONAL USE PERMIT

Response: The Applicant has elected to pursue Council rather than County approval, and therefore Wasco County’s revocation authority does not apply. Instead, the Applicant will be bound by the requirements and conditions of the site certificate.

Chapter 10 – Fire Safety Standards

Response: The Applicant has reviewed Chapter 10 of the LUDO and has determined that the criteria in Chapter 10 are intended for dwellings, agricultural structures, and land divisions, which the Facility does not include. The Applicant has addressed equipment and systems for fire prevention and control in Section B.2.6 of Exhibit B, and the Applicant intends to comply with the fire safety recommendations from the Oregon State Fire Marshal (see Attachment K-2). The Applicant will also follow the guidelines set forth in the Emergency Response Plan and Fire Suppression/Wildfire Management Plan.

SECTION 19.010 Purposes

This chapter describes the requirements for establishing non-commercial energy facilities, commercial energy facilities and related uses (as included) in Wasco County. The goals of this chapter are to:

- Encourage renewable energy production;
- Utilize clear and objective standards;
- Establish a clear, consistent and accountable application process;
- Collaborate and coordinate with agencies and other stakeholders;
- Minimize conflict with other permitted uses through compatibility review;
- Protect resource identified in the Wasco County Comprehensive Plan; and
- Protect the public health, safety and general welfare of the citizens of Wasco County.

The uses described in this chapter are only allowed if listed in the zoning section in Chapter 3 applicable to the subject property.

Response: The 230-kV transmission line is permitted subject to standards pursuant to WCLUDO 19.010(A), which implements ORS 215.275. The remainder of the Facility, excluding improvements to existing public roads, is permitted as a conditional use pursuant to WCLUDO 19.010(B).

SECTION 19.030 Commercial Power Generating Facilities Review Process and Approval Standards

A. Review Processes - Commercial Power Generating Facilities & Related Uses (energy facilities) shall be reviewed pursuant to the following. Where standards are less restrictive than comparative standards in other sections, the more restrictive shall govern.

1. Review Authority Review:

   c. EFSC Review:

      (1) EFSC has regulatory authority over all energy facilities designated by ORS 469.300. However, pursuant to ORS 469.480 EFSC shall designate the BOC as a Special Advisory Group. As such and at their discretion the BOC may participate in the siting process pursuant to the role established in ORS 469 and OAR 345, which includes recommending substantive criteria applicable to the proposed energy facility.

      (2) Pursuant to ORS 469.320(8), notwithstanding the threshold limits in ORS 469.300, an applicant can elect to have EFSC review an energy facility that may otherwise be subject to Wasco County’s jurisdiction.

      (3) If for any reason the BOC desires, they may defer regulatory authority of energy facility to EFSC notwithstanding it is less than the threshold designated by ORS 469.300.

Response: The Applicant has elected to seek a Council determination of compliance under ORS 469.504(1)(b).
B. Non-Resource Zone Standards:

1. **Small Scale Commercial Power Generating Facilities** - Pursuant to Subsection A(1)(b)(1) above, commercial power generating facilities that are considered small scale will be allowed in non-resource zones subject to the standards of Section 19.020.

2. **Large Scale Commercial Power Generating Facilities** - Except for related or supporting facilities, large scale commercial power generating facilities shall not be allowed in non-resource zones.

3. **Related or Supporting Facilities (Reasonable Alternatives Analysis)** - Related or supporting facilities to a commercial power generating facility may be allowed in non-resource zones subject to Conditional Use Review upon a showing that such related or supporting facilities are necessary for siting the commercial power generating facility. To the extent practicable, any related or supporting facilities must be consistent in size, scale, and impact as other existing or allowed uses in the non-resource zone. Related or Supporting Facilities shall be reviewed as part of the Commercial Power Generating Facility and not subject to a separate Conditional Use Review. To demonstrate the related or supporting facilities are necessary within the meaning of this section, an applicant must show that reasonable alternatives have been considered and that the related or supporting facilities must be sited in a non-resource zone after considering the following factors:
   a. The related or supporting facilities will be consistent in size, scale and impact as other existing or allowed uses in the non-resource zone;
   b. Technical and engineering feasibility of siting the energy facility as a whole;
   c. Availability of existing rights-of-ways and public roads and proximity to transmission lines and interconnections;
   d. Environmental impacts associated with avoiding non-resource zoned land; and
   e. Protection of farm and forest resources.

**Response**: The portion of the Facility in Wasco County will be located in Wasco County’s EFU zone. Accordingly, the nonresource zone standards do not apply.

C. **General Standards** - The following standards apply to energy facilities as outlined in Section A above, in addition to meeting the Conditional Use Standards listed in Chapter 5:

1. **Air Safety** - All structures that are more than 200 feet above grade or, exceed airport imaginary surfaces as defined in OAR Chapter 738, Division 70, shall comply with the air hazard rules of the Oregon Department of Aviation and/or Federal Aviation Administration. The applicant shall notify the Oregon Department of Aviation and the Federal Aviation Administration of the proposed facility and shall promptly notify the Planning Department of the responses from the Oregon Department of Aviation and/or Federal Aviation Administration.

   Aerial Sprayers and operators who have requested to be notified will receive all notifications associated with the energy facility as required by Chapter 2, Development Approval Procedures.
**Response:** All Facility components will comply with air hazard rules imposed by the Oregon Department of Aviation and the FAA.

2. **Interference with Communications** - The energy facility shall be designed, constructed and operated so as to avoid any material signal interference with communication systems such as, but not limited to, radio, telephone, television, satellite, microwave or emergency communication systems. Should any material interference occur, the permit holder must develop and implement a mitigation plan in consultation with the Planning Department.

**Response:** The Facility will be designed, constructed, and operated to avoid any material interference with communication systems.

3. **Noise** - The energy facility shall comply with the noise regulations in OAR Chapter 340, Division 35. The applicant may be required to submit a qualified expert’s analysis and written report.

**Response:** The Facility will comply with the noise regulations set forth at OAR Chapter 340, Division 35. Exhibit X provides the results of a noise analysis for the Facility. This analysis concludes that applicable DEQ noise regulations will be met for Facility construction and operation, including compliance with the 50-dBA limit for noise-sensitive receptors (Exhibit X, Section X.7). When a precise turbine layout has been selected and before construction, the Applicant will submit an acoustical analysis using the same methodology as the analysis conducted for Exhibit X, along with evidence (including secured noise easements for any sensitive receptors) that demonstrates compliance with OAR Chapter 340 Division 35.

4. **Visual Impact**

   a. **Scenic Resources** – To issue a conditional use permit for an energy facility, the county must find that the design, construction, and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources or values identified as significant or important in the Wasco County Comprehensive Plan.

   **Response:** Exhibit R (Section R.4) describes the potential impacts to scenic and aesthetic resources. Analysis results in Exhibit R (Section R.8) indicate that the Facility will not cause significant adverse impacts to scenic resources. The Facility will potentially be visible from three scenic resources within the analysis area: John Day Fossil Beds National Monument, John Day River and Canyon, and County-designated scenic highways. Visibility of the turbines and parts of the 230-kV transmission line will be limited from these three resources. Turbines and the transmission line will not be dominant visual elements on the landscape, and they will likely not attract the attention of casual observers. Lights on the turbines may be visible from the John Day Fossil Bed National Monument, but since the Monument is only open during daylight hours, potential impacts will be less than significant. The Applicant has minimized any impacts to these scenic and recreational resources through Facility design.

   b. **Protected Areas:** Except as provided in subsections (b) and (c) below, an energy facility shall not be located in the areas listed below:

      (1) National recreation and scenic areas, including but not limited to the Columbia River Gorge National Scenic Area;

      (2) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;
(3) State parks and waysides as listed by the Oregon Department of Parks and Recreation;

(4) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(5) National and state fish hatcheries or national and state wildlife refuges;

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

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

Response: The Facility will not be located in the identified protected areas.

c. Additional Visual Mitigation Impacts for All Facilities - The design, construction and operation of the energy facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified in subsection (b) above. Methods to mitigate adverse visual impacts could include but are not limited to:

(1) Building the energy facility near the edge of contiguous timber areas or using the natural topography to obscure the energy facility;

(2) Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation; and

(3) Retaining or planting vegetation to obscure views of the energy facility.

Response: As noted above, the Facility will be located to minimize any visual impacts to scenic resources. Moreover, the turbines are proposed to be painted flat gray or off-white, in order to blend in to the surrounding landscape.

5. Natural Resource/Wildlife Protection - Taking into account mitigation, siting, design, construction and operation the energy facility will not cause significant adverse impact to important or significant natural resources identified in the Wasco County Comprehensive Plan, Wasco County Land Use and Development Ordinance or by any jurisdictional wildlife agency resource management plan adopted and in effect on the date the application is submitted. As appropriate, the permit holder agrees to implement monitoring and mitigation actions that Wasco County determines appropriate after consultation with the Oregon Department of Fish and Wildlife, or other jurisdictional wildlife or natural resource agency. Measures to reduce significant impact may include, but are not limited to the following:

a. Providing information pertaining to the energy facility’s potential impacts and measures to avoid impacts on:

(1) Wildlife (all potential species of reasonable concern);

(2) Wildlife Habitat;
(3) **Endangered Plants; and**

(4) **Wetlands & Other Water Resources.**

b. Conducting biologically appropriate baseline surveys in the areas affected by the proposed energy facility to determine natural resources present and patterns of habitat use.

c. Selecting locations to reduce the likelihood of significant adverse impacts on natural resources based on expert analysis of baseline data.

d. Utilizing turbine towers that are smooth steel structures that lack features that would allow avian perching. Where horizontal surfaces cannot be avoided, anti-perching devices shall be installed where it is determined necessary to reduce bird mortality.

e. Designing and installing all aboveground transmission line support structures following the current suggested practices for avian protection on power lines published by the Avian Power Line Interaction Committee.

f. Utilizing towers and transmission line support structures designed so the foundation area and supports avoid the creation of artificial habitat or shelter for raptor prey.

g. Controlling weeds to avoid the creation of artificial habitat suitable for raptor prey such as spreading gravel on turbine pad.

h. Avoiding construction activities near raptor nesting locations during sensitive breeding periods and using appropriate no construction buffers around known nest sites.

i. Using suitable methods such as coloration or sound producing devices to discourage birds from entering areas of concentrated solar energy near solar-thermal mirrors or other devices that concentrate solar radiation.

j. Locating transmission lines or associated transmission lines with the energy facility at least 50 feet from the edge of the nearest wetland or water body except where the line is required to cross the wetland or water body.

k. Separating transmission lines or associated transmission lines with the energy facility from the nearest wetland or water body by topography or substantial vegetation to the extent practical, except where the line is required to cross the wetland or water body.

l. Locating transmission towers or associated transmission towers outside of Class I or II streams unless:

   (1) Adjoining towers and conductors cannot safely and economically support the line(s) that span the stream without an in-stream tower; and

   (2) The lines cannot be safely and economically placed under the water or streambed.
Developing a plan for post-construction monitoring of the facility site using appropriate survey protocols to measure the impact of the project on identified natural resources in the area.

Response: As explained in Exhibits P and Q, the Facility will not significantly affect any listed endangered or threatened species or adversely affect fish and wildlife species or habitat. Exhibits P and Q identify specific fish and wildlife resources, including state and federally listed species in the area, and any potential impacts to those resources. Those Exhibits establish that the Facility is not expected to significantly affect any listed endangered or threatened species or adversely affect fish and wildlife species or habitat.

Exhibit P (Section P.6) identifies and categorizes fish and wildlife habitat within the habitat analysis area. There are no Category 1 or 5 habitats in the analysis area. The bulk of the habitat is in Categories 3, 4, and 6. Approximately 75 percent of the permanent impacts will occur to Category 3 rangeland (consisting of shrub-steppe and biscuit scabland) and 17 percent will occur to Category 6 agricultural and developed habitats. Similarly, temporary impacts will occur primarily to Category 3 habitat, accounting for approximately 78 percent of the temporary impact to habitat areas. A monitoring plan will be developed in coordination with ODFW to evaluate actual Facility impacts.

As described in Exhibit J (Section J.4), 37 wetlands and 24 streams were identified during the field investigation. Two wetlands and eight streams will be permanently or temporarily affected by construction of the Facility. These wetland and aquatic habitat features do not provide habitat for any listed endangered or threatened fish or wildlife species and no impacts are expected to fish and wildlife or their associated habitat.

Exhibit J (Section J.5) identifies two wetlands and eight streams that will be permanently or temporarily affected by the Facility within the study area, primarily from the proposed access roads and underground collector lines. Per the Wasco County Land Use and Development Ordinance, four of the streams that will be permanently or temporarily affected by the Facility are classified as Class II streams and one of the affected wetlands is classified as a Class II wetland (see Table J-1 in Exhibit J). The 2010 Wasco County definitions of Class I or II streams and wetlands are derived from the Forest Practice Rule Guidance in OAR 629-635-0200, Water Classification (Roberts, 2012). The Applicant submitted a Joint Permit Application to the Oregon Department of State Lands in June 2012 for impacts to waters of the State.

Access road crossing impacts will include excavation of channel bed material, culvert placement, and rock and gravel fill placement over the culvert to create a roadbed. Culverts will be adequately sized to pass anticipated storm flows. Riprap will be placed at the culvert ends for erosion control. Total in-channel impacts to streams and wetlands for permanent and temporary impacts will be approximately 177 cubic yards of removal and 566 cubic yards of fill (0.08 acre) and will affect 258 feet of stream length.

In sum, the Facility primarily avoids impacts to wetlands, fish and wildlife habitat, and threatened and endangered species, and to the extent some impact occurs, the Applicant will mitigate for any unforeseen impacts to wildlife habitat based on habitat categorization, as required by ODFW. Locations within the Facility site boundary other than the proposed locations would have a greater impact on environmentally sensitive areas, including habitat.

Protection of Historical and Cultural Resources - The applicant shall complete a cultural resources survey of areas where there will be temporary or permanent disturbance. During construction, cultural resources included in the Wasco County Comprehensive Plan shall be flagged and avoided in areas of potential temporary or permanent disturbance, and construction activities monitored to ensure all cultural resources in such areas are avoided, unless appropriate permits are obtained from the Oregon State Historic
Preservation Office. Prior to construction an Inadvertent Discovery Plan (IDP) shall be developed that must outline the procedures to be followed in the case previously undiscovered archeological, historical or cultural artifacts are encountered during construction or operation of the energy facility, in compliance with ORS 358.905-358.955 and any other applicable local, state and federal law.

Response: Exhibit S (Sections S.5, S.6, and S.7) identifies existing cultural and historic resources in the analysis area and the potential impacts on those resources associated with Facility construction. The Applicant recorded a total of 63 archaeological sites within the analysis area, including 32 historic sites, 20 prehistoric era sites, and 11 stacked rock features of undetermined antiquity. None of the sites is listed on the NRHP. Fifty-six (56) sites have been preliminarily assessed as potentially eligible for listing on the NRHP. Seven sites have been preliminarily assessed as not eligible for listing on the NRHP. The Applicant will site Facility components in such a way as to avoid direct impacts to historic, cultural, and archaeological resources identified as eligible or potentially eligible for listing on the NRHP. The Applicant proposes to identify these sites on Facility construction maps as no-entry areas, and to flag a 200-foot buffer around precontact and unknown sites, and a 100-foot buffer around historic archaeological sites, prior to construction to prevent inadvertent impacts during construction activities. An Unanticipated Discovery Plan is included with the Cultural Resources Report in Exhibit S and monitoring is proposed if construction occurs within buffer areas.

7. Fire Protection & Emergency Response - A fire protection and emergency response plan shall be developed and implemented in consultation with the applicable fire district or department and/or land management agency to minimize the risk of fire and respond appropriately to any fire or emergency that occurs onsite for all phases of the life of the facility. In developing the plan the applicant shall take into account, among other things, the terrain, dry nature of the region, address risks on a seasonal basis, and identify the locations of fire extinguishers, nearby hospitals, telephone numbers for emergency responders, and first aid techniques.

Response: A fire protection/emergency response plan will be developed and implemented in consultation with the Oregon State Fire Marshal and the Wasco County Emergency Response Coordinator. The Applicant has already corresponded with both entities, who have both provided input on fire protection and emergency response for the Facility (Attachment K-2; Davidson, 2012, personal communication).

8. Public Safety - A public safety plan shall be developed and implemented to exclude members of the public from hazardous areas within the Energy Facility Project Area.

Response: A public safety plan will be developed and implemented.

9. Transportation Plan - A transportation plan shall be developed and implemented in consultation with the Wasco County Road Department and/or the Oregon Department of Transportation (ODOT). The plan shall be consistent with any applicable requirements from the Wasco County Transportation System Plan and shall also provide or address:

a. The size, number, and location of vehicle access points off of public roads;

b. Use of existing roads to the extent practical to minimize new access roads; and

c. Restoring the natural grade and revegetating all temporary road cuts, used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.
d. A Road Impact Assessment/Geotechnical Report for roads to be used by the project. Said report should include an analysis of project-related traffic routes to be used during phases of construction, project operation and decommissioning. The report and any subsequent amendments shall be used as a discipline study and shall be incorporated into the Road Use Agreement between the Applicant and the County.

Response: A transportation plan will be developed and implemented in consultation with the Wasco County Road Department, Sherman County, and the Oregon Department of Transportation.

10. Road Use Agreement - Where applicable, the Wasco County Road Department shall require the applicant to enter into a Road Use Agreement with the County to ensure that project construction traffic is mitigated and any damage to county roads that is caused by the construction of the energy facility or its related or supporting facilities is repaired by the applicant, and such county roads are restored to pre-construction conditions or better (this includes a weed plan and providing for revegetation).

Response: If necessary, the Applicant will enter a road use agreement with the County respecting damage to Wasco County roads caused by the construction of the Facility, as well as road access, usage, and construction in Wasco County.

11. Onsite Access Roads and Staging Areas - The impact of onsite access roads and staging areas within the Energy Facility Project Area shall be limited by:

a. Constructing and maintaining onsite access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site;

b. Using existing onsite access roads to the extent practical and avoiding construction of new on-site access roads as much as possible; and

c. Restoring the natural grade and revegetating all temporary access roads, road cuts, equipment staging areas and field office sites used during construction of the energy facility. The applicant shall specify the type and amount of native seed or plants used to revegetate the disturbed areas and a timeline to complete this work.

Response: The Applicant will locate access roads and staging areas to minimize disturbance and maximize transportation efficiency, and will use existing public and private farm roads to the extent feasible. As described in Exhibit I (Section I.5), any soils exposed during construction will be revegetated to prevent soil erosion from wind and rain.

12. Dust Control - All approved non-paved temporary or permanent roads and staging areas within the Energy Facility Project Area shall be constructed and maintained to minimize dust, which may be addressed through the Road Use Agreement. If roads and staging areas are not constructed with material that would prevent dust, the permit holder must regularly water roads and staging areas as necessary or apply an approved dust suppression agent such as Earthbind 100 to minimize dust and wind erosion.

Response: All access roads and staging areas will be constructed and maintained to minimize dust.
13. **Erosion and Sediment Control** - All ground disturbing activities shall be conducted in compliance with a National Pollutant Discharge Elimination System (NPDES) permit as may be required by Oregon Department of Environmental Quality. Where applicable, an NPDES permit must be obtained. The plan must include best management practices for erosion control during construction and operation and permanent drainage and erosion control measures to prevent damage to local roads or adjacent areas and to minimize sediment run-off into waterways.

**Response**: The Facility will obtain an NPDES 1200-C permit, as described in Exhibit I (Sections I.1, I.4.3, and I.5), that will address erosion from the Facility’s construction. The NPDES permit will require the use of best management practices to minimize the potential for erosion. The Applicant will maintain all staging areas and other areas disturbed during the placement of towers, creation of roads, and the creation of substation and possible regeneration station to the greatest extent possible. The Applicant will also revegetate any disturbed ground within the first planting season after completion of Facility construction.

14. **Weed Control** - A weed plan shall be developed in consultation with the Wasco County Weed Department and implemented during construction and operation of the energy facility.

**Response**: The Applicant has drafted a weed management plan to prevent the establishment of weeds in consultation with the Wasco County Weed Department and Sherman County. See Attachment I-3 to Exhibit I.

15. **Signs** - Outdoor displays, signs or billboards within the energy facility project boundary shall not be erected, except:

   a. Signs required for public or employee safety or otherwise required by law; (e.g., OSHA or compliance with the Manual of Uniform Traffic Control Devices (MUTCD) administered through the County Road Department); and

   b. No more than two signs relating to the name and operation of the energy facility of a size and type to identify the property for potential visitors to the site, but not to advertise the product. No signs for advertising of other products are permitted.

**Response**: The only signs proposed are safety signs and signs to identify Facility components. Any signs used at the Facility will adhere to standards identified by LUDO and by the Wasco County Road Department.

16. **Underground Systems** - Where reasonably practicable, power collector and communication systems shall be installed underground, at a minimum depth of 3 feet. Shallower depths may be authorized where notification and safety measures are taken and wires are placed in schedule 40 conduit. The cable collector system shall be installed to prevent adverse impacts on agriculture operations and natural resources.

**Response**: Approximately 95 percent of the 34.5-kV collector lines will be placed underground. The remaining 5 percent, or 3 to 4 miles, are not feasible to place underground and may run on overhead wooden monopole structures ranging from 40 to 50 feet in height.

17. **Operation & Maintenance Buildings** - Permanent maintenance/operations buildings shall be located in the same zone as the principal energy facility, except that such buildings may be constructed in a separate zone if:
a. The building is designed and constructed generally consistent with the character of similar buildings used in the surrounding area; and

b. The building will be removed or converted to another approved use upon decommissioning of the energy facility consistent with the provisions of this ordinance.

Response: The O&M building will be located in the same zone as the rest of the Facility. The O&M building will be sited and constructed according to the property development standards listed in Section 3.210(F) of the LUDO.

18. Coordination and Documentation - Prior to commencement of any construction, all other necessary permits shall be obtained, e.g. building permit, rural address, road approach, utility and other permits from the Wasco County Public Works Department, and/or from ODOT as well as any other applicable local, state or federal permits or approvals.

Response: The Applicant shall obtain all necessary federal, state, and local permits or approvals required for construction, operation, and retirement of the Facility.

19. Termination and Decommissioning. For an energy facility sited through EFSC, compliance with EFSC’s financial assurance and decommissioning standards shall be deemed to be in compliance with these requirements.

a. The applicant shall prepare a decommissioning plan that describes the actions to restore the site to a useful, non-hazardous condition, including options for post-dismantle or decommission land use, information on how impacts on fish, wildlife and the environment would be minimized during the dismantling or decommissioning process, and measures to protect the public against risk or danger resulting from post-decommissioning site conditions in compliance with the requirements of this section.

b. The applicant shall provide a detailed cost estimate, a comparison of that estimate with funds to be set aside, in the form of a financial assurance (bond, letter of credit, insurance policy or other such form of guarantee acceptable to Wasco County), and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate and financial assurance may take into account salvage value associated with the project, and can be requested for review and update by Wasco County at their discretion (e.g., every 5 years).

c. The following shall be required as conditions of the Wasco County approval:

(1) If operation of the energy facility ceases or begins construction of the project, but does not complete it, the permit holder shall restore the site according to a plan approved by Wasco County. A plan shall be submitted that ensures the site will be restored to a useful, non-hazardous condition without significant delay, including but not limited to the following:

(a) Removal of aboveground and underground equipment, structures and foundations to a depth of at least three feet below grade (four feet if cropland). Underground equipment, structures and foundations need not be removed if they are at least three feet
below grade and do not constitute a hazard or interfere with agricultural use or other resource uses of the land. Restoration of the surface grade and soil after removal of aboveground structures and equipment.

(b) Removal of graveled areas and access roads and restoration of surface grade and soil.

(c) Revegetation of restored soil areas with native seed mixes, plant species suitable to the area, consistent with Wasco County’s weed control plan.

(d) For any part of the energy facility on leased property, the plan may incorporate agreements with the landowner regarding leaving access roads, fences, gates or buildings in place or regarding restoration of agricultural crops or forest resource land. Said landowner will be responsible for maintaining said facilities for purposes permitted under applicable zoning.

(e) The underground power collector and communication lines need not be removed if at a depth of three feet or greater. These cables can be abandoned in place if they are deemed not a hazard or interfering with agricultural use or other consistent resource uses of the land.

(f) The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration.

(e) The plan must include a schedule for completion of site restoration work.

(2) Before beginning construction of the energy facility, the permit holder must submit in a form and amount satisfactory to Wasco County, assuring the availability of adequate irrevocably committed funds to restore the site to a useful, non-hazardous condition naming Wasco County as beneficiary or payee. The form may include posting a bond, issuing an irrevocable letter of credit, purchasing a paid up insurance policy, or by other means acceptable by Wasco County and shall ensure continuity between owners.

(3) The amount of the financial assurance (bond or other such form of guarantee) shall be annually adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services’ “Oregon Economic and Revenue Forecast,” or by any successor agency (the “Index”). The permit holder (including possible successor if sold or transferred) shall increase the amount of the financial assurance annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the index is no longer published, Wasco County shall select a comparable index for adjusting the
amount. The amount of the financial assurance shall be prorated within the year to the date of decommissioning.

(4) Per the request of Wasco County, the permit holder (including possible successor if sold or transferred) shall describe the status of the financial assurance in a report (e.g., annual report submitted to Wasco County).

(5) The financial assurance shall not be subject to revocation or reduction before retirement of the energy facility site.

Response: The Applicant has elected to seek a Council determination of compliance with the Council’s land use standard. Exhibit W provides a detailed review of site restoration actions and tasks for dismantling and decommissioning the Facility, including compliance with OAR 345-022-0050, Retirement and Financial Assurance.

20. Final Location - The actual latitude and longitude location or Oregon State Plane NAD83 HARN (international feet) coordinates of the energy facility and related or supporting facilities shall be provided to the County GIS Department once commercial electrical power production begins. Alternatively, this information could be provided in GIS layer consistent with the datum referenced above or any other datum deemed acceptable by the Wasco County GIS Department.

Response: The Applicant will provide coordinates of the Facility and related or supporting facilities to the County GIS Department once operation begins.

21. Power Production Reporting - The County may require a report of nonproprietary power production for any time frame after the energy facility first begins production if permitted through the County. If requested, the permit holder shall have 180 days to produce said report.

Response: The Applicant has elected to seek a Council determination of compliance with the Council’s land use standard. Accordingly, this section does not apply.

D. Specific Standards - The following standards apply to specific types of energy facilities as described, in addition to the General Standards in Section C above.

1. Wind Energy Facilities:

   a. Visual Impact - To the extent practical, the proposed wind energy facility has been designed to minimize visual impact upon open space and natural landscape by:

      (1) Using underground communication and power collector lines (transmission lines that connect each turbine to a substation);

      (2) Using turbine towers of uniform design, color and height;

      (3) Lighting - Lighting of towers shall be evaluated on a case-by-case basis and is only allowed if required by the Oregon Department of Aviation or Federal Aviation Administration. If lighting is required by Oregon Department of Aviation or Federal Aviation Administration, the applicant shall seek approval of radar triggered lighting or use of the least polluting light source practicable under the law.
(4) Using existing roads within the Energy Facility Project Area to provide access to the site, or if new roads within the Energy Facility Project Area are needed, minimizing the amount of land used for new roads and locating roads to reduce visual impact;

(5) Using existing substations, or if new substations are needed, minimizing the number of new substations; and

(6) Shadow Flicker – Upon the non-participating owner’s request, the applicant shall demonstrate that the wind turbines, taking into account mitigation measures, will have no significant adverse impact of shadow flicker on an existing dwelling of a non-participating landowner within ¼ mile (1,320 feet) from a turbine, measured from the centerline of the turbine to the centerline of the dwelling. Towers shall be allowed to create an adverse shadow flicker impact to an existing dwelling on a non-participating landowner’s property if written permission from the property owner and an adjustment is granted under Section 19.030(D)(1)(c). Said written permission shall be made part of the deed records of the non-participating landowner’s property.

**Response:** As discussed throughout this Exhibit, the Facility has been designed to minimize visual impact upon open space and natural landscapes. Although the wind turbines and met towers must be mounted on tall tower structures aboveground, the Applicant will make these facilities as unobtrusive as possible through the use of uniform design and neutral colors. The turbines will be painted flat gray or off-white, in order to blend in to the surrounding landscape. Based on conservative estimates, approximately 95 percent of the 34.5-kV collector lines will be placed underground. Turbines and other components of the proposed Facility will only be lit as required by the Federal Aviation Administration (FAA). To the extent feasible (and in consultation with the owners and operators), existing roads will be used by the Facility to minimize the need to construct new roads. New substations will be limited to two. Only one building on the property of a nonparticipating landowner falls within the ¼-mile buffer noted in (6) above; however, it is a nonresidential building and therefore is not subject to this criterion.

b. **Public Safety** - The wind energy facility shall be designed, constructed, and operated to protect the public by measures that may include, but are not limited to, the following:

(1) Installing the tower so at the closest point, the sweep of any exposed blade or other exposed moving component is at least 20 feet above the tallest existing or foreseeable obstruction to blade movement unless based on the proposed location and site specific circumstances, the tower will not represent a safety hazard; and

(2) Designing, constructing and operating the energy facility to exclude members of the public from close proximity to turbine blades and electrical equipment, including installing locks on turbine tower access doors; and

(3) Designing, constructing and operating the energy facility to protect against structural failure of the turbine tower or blades that could endanger members of the public’s safety, including having adequate safety devices and testing procedures designed to warn members of the
public of impending failure and to minimize the consequences of such failure.

Response: The site is located in a rural agricultural setting where adjacent or nearby properties are distanced from Facility components. Security features, such as fences and gated Facility access roads, will be provided for public safety and to prevent unauthorized access from adjacent private property. Key Facility features will be secured with locking doors or hatches.

c. Setbacks:

(1) Project Boundaries - If the wind energy project encompasses more than one parcel neither the wind turbine setback to non-project boundaries nor the property line setbacks of the underlying zone in which the project is located are applicable to any internal property lines within the project area.

(2) Non Project Boundaries - Wind turbines shall be set back from the property line of any abutting property not part of the project (non-project boundaries), the right-of-way of any dedicated road, and any above ground major utility facility line a minimum of 1.5 times the height of the wind turbine tower (i.e., fall height). Wind turbines shall be set back from any above ground minor utility facility line a minimum of 1.1 times the height of the wind turbine tower.

- An applicant may request an adjustment to non-project boundaries described in (3)(c) below.

- Wind turbines shall meet the underlying zone setback requirement unless a variance is granted pursuant to either Chapter 6 or 7.

Response: With respect to the Wasco County setback requirements, the Applicant will satisfy all setback standards pursuant to applicable County code provisions. Final compliant locations for both wind turbine generators and high-voltage transmission towers will be determined and confirmed during final Facility design and micrositing.

(3) Resource Zone Dwellings

(a) Participating Landowners: For owners of legal resource dwellings who are also landowners in the Energy Facility Project Area, wind turbine setbacks shall be 1,320 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance necessary to comply with the DEQ noise standard (OAR 345-035-0035). Applicant must provide evidence into the permit record demonstrating with reasonable assurance that the DEQ noise standard will be met and, prior to construction, provide evidence of any recorded noise easement obtained under OAR 345-035-0035.

(b) Non-Participating Landowners: For owners of legal resource dwellings who are not landowners in the Energy Facility Project Area, wind turbine setbacks shall be 3,520 feet, measured from the centerline of the turbine to the edge of the dwelling, or the distance...
required to comply with the DEQ noise standard (OAR 345-035-0035), whichever is greater, unless a noise easement is obtained under OAR 340-035-0035.

(c) Adjustment Provision - An administrative adjustment from regulations addressing turbine setbacks from dwellings in resource zones may be authorized pursuant to the Administrative Action process of Section 2.060(A) by the Director or designee. As part of the permitting process in judging whether or not an administrative adjustment shall be approved or denied, the administrative authority shall weigh the appropriateness of the proposal against any adverse conditions that would result from authorizing the proposed adjustment. An administrative adjustment to wind turbine setbacks from dwellings in resource zones may be authorized upon findings that the following criteria are met:

1. Written consent of all property owners directly impacted by the proposed adjustment or if applicable road authority or utility.
2. The proposed adjustment does not establish a setback in conflict with the DEQ noise standard.
3. The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm of forest use.
4. The proposed adjustment will not unduly burden existing infrastructure.
5. The proposed adjustment will not unduly impair safety in the area.
6. The proposed adjustment will minimize impacts to environmental resources.

Response: As proposed, the turbines will comply with the Resource Zone Dwelling setbacks for Participating Landowners and Nonparticipating Landowners.

(4) Non-Resource Boundaries - Wind turbines shall be setback a minimum of 1 mile (5,280 feet) from all non-resource zoned property boundaries located outside of urban growth boundaries or urban reserves (as measured from the centerline of the turbine to the edge of the property boundary zoned for non-resource purposes, e.g. rural residential). Adjustment provisions do not apply to these non-resource zone property boundary setbacks.

(5) City Limits and Urban Areas – Wind turbines shall be setback ¾ mile (3,960 feet) from the established city limit, urban growth boundary or urban reserve boundary of an incorporated city (whichever is the more restrictive applies) unless a lesser setback is granted through the adjustment process under this provision.
**Adjustment Provision** – Applicant may, as part of the wind energy permitting process, obtain an administrative adjustment to authorize a lesser setback from regulations addressing turbine setbacks from city limits, urban growth boundaries or urban reserves. This may be authorized as part of the CUP pursuant to the Administrative Action process of Section 2.060(A) by the Director of designee and upon findings that demonstrate the following criteria are met:

(a) The incorporated city that would be affected has consented, in writing, to an adjusted setback.

(b) The proposed adjustment complies with DEQ noise standard.

(c) The proposed adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm or forest use.

(d) The proposed adjustment will not unduly burden existing infrastructure (e.g., underground utilities or leach fields).

(e) The proposed adjustment will not unduly impair safety in the area.

(f) The proposed adjustment will minimize impacts to environmental resources (e.g., wetlands or identified EPDs).

**Response:** The Facility will comply with the Nonresource Boundary setbacks.

(6) **Downwind Properties** - The establishment of a commercial wind energy facility consistent with the requirements of this ordinance shall not constitute wind access rights that are protected by this ordinance beyond the following setback requirement.

If a wind turbine 200’ in height or taller has been previously placed on a downwind property that is not part of the project, the closest tower on the upwind property shall be set back a minimum of fifteen rotor diameters from the downwind tower location or any lesser distance agreed to by the downwind and upwind property owners or those authorized to act on their behalf.

**Response:** The Facility will comply with the Downwind Property setback.

**SECTION 19.040 Additional Approval Standards for Energy Facilities and Commercial Energy Facilities**

A. **Protected Areas.** An energy facility may not be sited in the areas listed in part 19.040(A)(1) through (3) unless the facility complies with part (A)(4) below.

1. **National parks, national monuments, national wildlife refuges, BLM Outstanding Natural Areas, BLM Areas of Critical Environmental Concern, Federal Research Natural Areas, U.S. Forest Service Special Interest Areas, Wilderness areas under the Federal Wilderness Act and areas recommended for designation as wilderness areas pursuant to section 603 of the Federal Land Policy Management Act of 1976, Federally designated Wild and Scenic Rivers or any rivers recommended for designation by the National Park Service.**
2. State of Oregon parks, waysides, refuges, wildlife management areas, and natural area preserves, scenic waterways and adjacent lands designated pursuant to ORS 309.845, wild fish streams designated by the Oregon Department of Fish and Wildlife, and experimental areas established by the Rangeland Resources Programs, School of Agricultural, OSU.

3. Areas which the comprehensive plan designates as not suitable for a given type and size of energy facility, because the area contains significant open space, mineral resources, fish and wildlife habitat, scenic views and sites, waterbodies, wilderness, cultural, geologic, historic, botanical, research, or recreational resources that cannot be protected from the adverse consequences of the facility.

4. Exceptions. An energy facility may be permitted in an area listed in parts 19.040(A)(1) through (3) above if it complies with at least one of the following exceptions, and it will be compatible with adjacent uses and resources. However, a hydroelectric dam or diversion is not permitted in a scenic waterway or adjacent lands designated pursuant to ORS 390.825.

   a. Accessory Use. A proposed energy facility is accessory to a permitted use.

   b. Authority Granted by Management. The public agency responsible for designation or management of a protected area in which an energy facility is proposed has authorized the application or approved the proposed facility. However, this is not an exception for areas listed in part 19.040 (A)(3).

   c. Substantially Equivalent Substitute. The applicant provides resources equal or better in quantity and quality to those adversely affected by the energy facility.

   d. Comprehensive Plan Designation. The comprehensive plan designates the site for an energy facility of the scale and type proposed.

Response: The Facility is not located within any of the areas described in this criterion and therefore no exception is required.

B. Conditionally Protected Areas. An energy facility or commercial energy facility in an area which the comprehensive plan designates as conditionally suitable for the scale and type of facility proposed shall comply with the conditions provided for the facility in the comprehensive plan.

Response: The Facility is not located in a Conditionally Protected Area designated in the Comprehensive Plan. Accordingly, this criterion does not apply.

D. Compliance with the Comprehensive Plan. The facility shall comply with the applicable policies of the comprehensive plan.

Response: As described below, the Facility complies with applicable WCCP goals and policies.

SECTION 19.050 Conditions of Approval

Approval of an energy facility shall be subject to the following conditions. In addition, the approval authority may require an energy facility that is approved as a conditional use to comply with other conditions as necessary to fulfill the purpose of this chapter.

A. Coordination
1. **Continuing Notice.** The applicant shall provide the county with a copy of all applications for, or notices of, state or federal permits, licenses, exemptions, or variances in conjunction with the construction and licensing of the facility and proposed significant changes to the facility. The applicant shall make a good faith effort to provide the copy at the earliest possible time.

2. **State and Federal Authority.** The applicant should demonstrate that all necessary state and federal permits, licenses, exemptions, variances, or authority are approved before initiating construction of the facility.

3. **Other Terms & Conditions.** The terms and conditions of the following authorities satisfy substantially similar standards and conditions of this chapter and supersede inconsistent county conditions.
   - A dredge and fill permit is granted by the Division of State Lands under ORS 541.615;
   - The proposed action is a forest operation that complies with the Forest Practices Act under ORS 526 - 527 and the Rules of Forest Practices;
   - Written approval of development within the Oregon Scenic Waterways System is granted by the Department of Transportation under ORS 390.800, the Energy Facility Siting Council under ORS 469.430-469.570, or the Water Resources Department under ORS 537.130 through 537.450;
   - Written approval of the Department of Environmental Quality when air or water quality discharge permits, exemptions, or variances are granted; or
   - The facility complies with substantially similar standards of the special districts listed in section (F)(4) below.

4. **Consistency with Service Districts and Special Purpose Agencies.** The development shall comply with the hazardous or solid waste, flood, surface, or groundwater, soil conservation, or resource management program(s) adopted by the appropriate emergency management authority, drainage district, soil conservation agency, or resource management agency(ies).

**Response:** WCLUDO Section 19.050(A) contains administrative criteria that require the Applicant to supply documentation that the Facility has received approval from various local and state regulatory agencies. The Applicant has elected to pursue Council rather than County approval for the Facility. Accordingly, agency documentation and approvals are coordinated through the Council’s process and, where applicable, are made conditions of the Council’s approval.

**B. Environmental Protection Overlay Districts.** An energy facility or commercial energy facility in the following overlay, combining, or floating districts shall comply with applicable terms of those districts:

1. The Flood Hazard Overlay district,
2. The Geologic Hazard Overlay district,
3. The Mineral Resources Overlay district,
4. The Cultural, Historic and Archaeological Overlay district,
5. The Sensitive Wildlife Habitat district,
6. The Columbia Gorge Overlay district,
7. The Airport Impact Overlay district, and
8. The Natural Areas Overlay district.

Response: The Facility is located within two Environmental Protection Overlay Districts: Geological Hazard Overlay and Mineral Resources Overlay. The applicable terms of these districts are discussed above in Sections 3.750 and 3.800.

C. Protection of Water Quality.

1. The development shall comply with the water quality standards for dissolved oxygen and temperature adopted by the Oregon Environmental Quality Commission (EQC) and codified in OAR 340-41 and shall not increase turbidity. Water quality effects of forest operations shall comply with the Oregon Rules for Forest Practices (ORFP) and the Forest Practices Act.

Response: These criteria do not apply. The Facility will use one well onsite exclusively for the O&M building and wastewater will drain into an onsite septic system. Any vehicle or component washdown will occur on land where the water will infiltrate into the ground.

D. Protection of Water Bodies and Wetlands. The development will incorporate mitigation and conditions to protect Class I and Class II streams and wetlands and the banks and vegetation along those streams and wetlands affected.

Response: Alternative Facility layouts with greater potential for stream crossing and wetland impacts initially were considered. The current proposed layout reflects consideration of zoning restriction, land availability, utilization of previously disturbed land, stream crossings, and existing wetlands and was specifically designed to avoid impacts to wetlands and waters to the maximum extent possible while still meeting Facility goals. Total in-channel impacts to streams and wetlands for permanent and temporary impacts will be approximately 177 cubic yards of removal and 566 cubic yards of fill (0.08 acre) and will affect 258 feet of stream length. In advance of field surveys, a literature review identified more than 100 additional streams and wetlands in preliminary Facility layouts. The survey corridor was narrowed in alternative Facility layouts to avoid these potential resources to the maximum extent possible.

Where stream and wetland impacts were unavoidable, the Facility was designed to minimize impacts. Efforts to avoid or minimize impacts include the following:

- Locate turbine strings, underground collector cables, and access roads to minimize the number of stream and wetland crossings.
- Use existing County and farm roads for Facility access and maintenance to the extent possible.
- Locate turbine strings and underground collector cable routes adjacent to existing farm roads as much as possible to minimize impacts associated with construction and maintenance of access roads.
• Locate new access roads, insofar as possible, adjacent to turbine towers. New access roads will serve the dual purpose of providing maintenance access for turbines and providing farmers with improved, all-weather access to their agricultural fields.

• Implement best management practices to help ensure that temporary impacts to the stream and wetland areas are avoided to the maximum extent practicable, including but not limited to the following:
  – Prevent all construction materials and debris from entering waterway.
  – Use filter bags, sediment fences, silt curtains, or other measures sufficient to prevent movement of soil. The sediment fence, check dams, and other erosion control measures will remain in place until the affected areas are well vegetated and the risk of erosion has been eliminated.
  – Use impervious materials to cover stockpiles when unattended or during rain events.
  – Avoid operation of heavy machinery in waterway.
  – Flag or fence unavoidable wetlands adjacent to the construction area for protection.

• Construct the crossings when the channel is dry, if possible. In the event of flow in the channel, isolate work areas by temporarily diverting water around the area using silt curtains or check dams.

In addition, the Applicant will submit the NPDES 1200-C permit application to DEQ in the spring of 2012.

E. Soil Protection. Development shall not cause a significant increase in erosion or sedimentation based on the topography, use and soil classification of the site and access to it. Practices to reduce or avoid erosion and sedimentation include but are not limited to the following.

1. Structures and access avoid areas of steep slopes where high cuts and fills are required and shall use natural contours.

2. The smallest practical area of land is to be exposed for the shortest practical time during development.

3. Measures are used such as seeding and sodding, temporary use of straw or fabric cover, aggregate cover, diversions authorized by state permit, sediment basins, and filters.

Response: The Facility will obtain an NPDES 1200-C permit, as described in Exhibit I, that will address erosion from the Facility’s construction. The NPDES permit will require the use of best management practices to minimize the potential for erosion.

F. Health and Safety.

1. Drinking Water. No water sources shall be used for consumption unless approved in writing by the Oregon State Health Division.

Response: As described in Exhibit O, drinking water will be provided in the O&M building from an exempt onsite well that produces less than 5,000 gallons per day.

2. Toilets. Field toilets approved by the county sanitarian or Oregon Department of Environmental Quality shall be available at construction sites in the vicinity and upstream of Class I or Class II streams or other water supplies.
Response: During construction, portable toilets will be provided in locations near construction areas and will be maintained by a local supplier.

3. Grounding. All structures which may be charged with lightning shall be grounded according to the Oregon State Electrical Specialty Code.

Response: All structures will be grounded according to the Oregon State Electrical Specialty Code.

4. Electrical Safety. Transmission lines associated with the facility shall not generate an electrical field greater than 9 kV per meter measured at grade and shall comply with the National Electrical Safety Code, based on a written decision by the Public Utility Commissioner.

Response: The proposed 230-kV transmission line will not exceed the 9-kV per meter limit at grade and will comply with the National Electrical Safety Code.

5. Air Safety. Any structure that is more than 200 feet above grade or exceeds airport imaginary surfaces defined in OAR 738, shall comply with the air hazard rules of the Oregon State Aeronautics Division (OSAD) and Federal Aviation Administration (FFA), based on a written action by those agencies.

Response: Some turbines and meteorological towers will include flashing red beacons, as required by the FAA.

6. Communications. The proposed facility shall not unduly reduce or interfere with electromagnetic communication signals. If undue reduction or interference occurs, the applicant shall return reception levels to pre-facility levels.

Response: No interference with existing communications is anticipated.

7. Noise. Construction and operation of the proposed facility shall comply with the noise regulations of the Oregon Department of Environmental Quality (DEQ) in OAR 340-35, based on a written decision by DEQ. In addition, a wind farm application shall identify noise sensitive property(ies) and ambient noise levels prior to construction.

Response: Exhibit X provides the results of a noise analysis for the Facility. This analysis concludes that applicable DEQ noise regulations will be met for Facility construction and operation, including compliance with the 50-dBA limit for noise-sensitive receptors (Exhibit X, Section X.7). When a precise turbine layout has been selected and before construction, the Applicant will submit an acoustical analysis using the same methodology as the analysis conducted for Exhibit X. The Applicant will also submit evidence of secured noise easements for any sensitive receptors.

8. Public Roads. Mud and other debris from related construction, road wear from related vehicles, or facility operation shall not create a hazard on public roads and highways. Mud and debris that fall onto a county road should be removed by the applicant as soon as possible.

Response: The Applicant will use several public roads during construction to deliver Facility components and provide site access to construction workers. Mud and other debris will be removed, as necessary, to maintain the safety of the public road system.
Some existing roads will require resurfacing with gravel or widening to accommodate construction and component delivery vehicles. Public road improvements will benefit the County because the Applicant will bear the cost and the improved roads will be available for public use.

G. Fish and Wildlife.

1. The applicant shall consult with the Oregon Department of Fish and Wildlife (ODFW) concerning the facility and shall provide information as requested to ODFW. The development shall be subject to ODFW recommendations that are consistent with the county decision regarding the facility.

Response: The Facility will not have a significant impact on wildlife habitat or riparian vegetation, and will not increase the likelihood of soil erosion. Exhibits P and Q identify specific fish and wildlife resources and potential impacts to those resources. As discussed in those Exhibits, the Facility is not expected to significantly affect any listed species or adversely affect fish or wildlife species or habitat. Mitigation for impacts to wildlife habitat will be coordinated with ODOE in consultation with ODFW.

2. A transmission line sited adjacent to wetlands or water bodies identified as critical bird habitat in the comprehensive plan shall comply with (a), (b), or (c) below:

   a. The line is lower than the level of surrounding treetops.

   b. The line is at least 50 feet from the edge of the nearest wetland or water body.

   c. The line is separated from the nearest wetland or water body by topography or substantial vegetation, does not use static or lightning wires, does use marker balls or flags on the line, or is perpendicular to the prevailing winds.

Response: The Applicant will avoid siting the 230-kV transmission line in wetlands or waterbodies identified in the comprehensive plan as critical bird habitat to the extent possible. Support poles for overhead transmission line crossings of streams and wetlands will be placed outside of wetlands and stream channels to the extent possible. Transmission line elements will comply with Section 19.050(a), (b), and (c), above.

K.5.2.2 Applicable Substantive Criteria from the WCCP

WCCP GOAL #1—Citizen Involvement

To develop and maintain a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Response: The Applicant has elected to have the Council make the land use decision in accordance with ORS 469.504(1)(b), and therefore the Council’s procedural requirements apply, rather than the County’s citizen involvement program. The Council’s procedure for making a site certificate decision is a public process. The Application is a public document that will be made available to the public. All documents issued by ODOE are public documents, most of which are posted on ODOE’s Internet website. The Department uses informational meetings, direct mailing, newspaper publication and the Internet to inform the public about the proceedings regarding the proposed Facility. Opportunities for public comment occur throughout the site certificate review process. Before the Council takes final action on this site certificate application, a contested case proceeding is available to address issues that were raised in the public hearings process. Council meetings are open to the public.
WCCP GOAL #2—Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Response: The Applicant is seeking a Council determination of compliance with land use standards and therefore the Council’s procedures apply to the land use determination procedures rather than the County’s specific public involvement procedures. The draft proposed order reviews compliance with the substantive Wasco County development criteria and comprehensive plan policies as well as relevant statewide land use planning goals, Oregon Administration Rules, and Oregon Revised Statutes.

WCCP GOAL #3—Agricultural Lands

To preserve and maintain agricultural lands.

Policy 1. Maintain Exclusive Farm Use zoning.

Implementation B(3) Non-farm uses permitted within farm use zones adopted pursuant to O.R.S. 215.213 should be minimized to allow for maximum agricultural productivity.

Response: ORS 215.283 identifies land uses permitted in EFU zones. As it relates to the proposed Facility, ORS 215.283(2)(g) permits, subject to approval, commercial utility facilities for the purpose of generating power for public use by sale. Effective January 8, 2009, wind power generation facilities are permitted on EFU-zoned lands under ORS 215.283(2)(g), pursuant to OAR 660-033-0130(37), which Wasco County has implemented through WCLUDO 3.210(3)(17). The principal use of the Facility, including the wind turbines, power collection system, collector substations, met towers, control system, and O&M building, constitute a use allowed under ORS 215.283(2)(g). Moreover, ORS 215.283(1)(c) allows utility facilities necessary for public service, not including commercial facilities for the purpose of generating electrical power for public use by sale. A utility facility necessary for public service may be established as provided in ORS 215.275. The 230-kV transmission line constitutes such a use, as allowed under ORS 215.283(1)(d), subject to the standards of ORS 215.275, which the county has implemented through Section 3.210(J)(8). The findings of compliance with WCLUDO 3.210(3)(17), which also demonstrate compliance with OAR 660-033-0130(37), establish that the proposed Facility is allowed under ORS 215.283(2)(g). The findings of compliance with WCLUDO Section 3.210(J)(8) demonstrate that the proposed 230-kV transmission line satisfies the requirements of ORS 215.275 and is allowed under ORS 215.283(1)(d).

WCCP GOAL #5—Open Spaces, Scenic and Historic Areas, and Natural Resources

To conserve open space and protect natural and scenic resources.

Policy 1 Mineral Resources

Protect and utilize appropriately the mineral and aggregate resources of Wasco County, and minimize conflict between surface mining and surrounding land uses.

Response: No conflict with surface mining is anticipated.

Policy 5 Wild & Scenic Rivers

The Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open spaces areas with consideration for agriculture and recreation.

Implementation C Allow only buildings customarily provided in conjunction with farm use within the visual corridors of the Deschutes and John Day Scenic Waterways.
Response: No portion of the Facility will be directly located in the Deschutes or John Day Scenic Waterway. Some Facility components may be visible from the John Day River and, while Facility turbines and the transmission line will not be visible from the Deschutes River, the transmission line may (in limited locations) be visible from the higher elevations of the Deschutes River corridor. Exhibit R evaluates potential impacts that may occur to the scenic and aesthetic resources in the Facility vicinity, and Exhibit T addresses potential impact to recreational areas. The Exhibit R (Section R.4) analysis identifies where the Facility components will be visible from these resources. Portions of turbines will be intermittently visible along the John Day and Deschutes rivers and associated hiking and multiuse trails, but will not dominate views.

Policy 7. Maintain the aesthetic quality of the Columbia River Gorge.

Response: No Facility components are visible from the Columbia River Gorge. Therefore, the proposed Facility will not affect the aesthetic quality of the Columbia River Gorge.

Policy 9. Fish and Wildlife

- Encourage land use and land management practices which contribute to the preservation and enhancement of fish and wildlife resources, with consideration for private agricultural practices.

- To conserve and protect existing fish and wildlife areas.

- To maintain wildlife diversity and habitat so that it will support optimum numbers of game and nongame wildlife for recreation and aesthetic opportunities.

Response: Exhibit P (Sections P.2 through P.7) identifies specific fish and wildlife resources, including state and federally listed species in the area, and potential impacts to those resources. Fish and wildlife habitats are categorized within the habitat analysis area. The Facility is not expected to significantly affect any listed endangered or threatened species or adversely affect fish and wildlife species or habitat, and there is little or no habitat in the area to support such species. A monitoring plan in coordination with ODFW is required to evaluate actual impacts. The siting process also requires the Applicant to consider and comply with the ODFW Fish and Wildlife Habitat Mitigation Policy as set forth in OAR 635-415-0000 through -0025. The bulk of the habitat within the analysis area is Categories 3, 4, and 6, and permanent impacts will occur only to those habitats. Temporary impacts will occur primarily to Category 3 habitat. Mitigation for these impacts is proposed with ODOE in consultation with ODFW and will be established before the site certificate is issued.

Policy 10. Historic, Cultural, and Archaeological Resources

Preserve the historical, archaeological, and cultural resources of the County.

Response: Exhibit S (Sections S.5, S.6 and S.7) identifies existing cultural and historic resources in the analysis area and the potential impacts on those resources associated with Facility construction. The Applicant recorded a total of 63 archaeological sites within the analysis area, including 32 historic sites, 20 prehistoric era sites, and 11 stacked rock features of undetermined antiquity. None of the sites is listed on the NRHP. Fifty-six (56) sites have been preliminarily assessed as potentially eligible for listing on the NRHP. Seven sites have been preliminarily assessed as not eligible for listing on the NRHP. The Applicant will site Facility components in such a way as to avoid direct impacts to historic, cultural, and archaeological resources identified as eligible or potentially eligible for listing on the NRHP. The Applicant proposes to identify these sites on Facility construction maps as no-entry areas, and to flag a 200-foot buffer around precontact and unknown sites, and a 100-foot buffer around historic archaeological sites, prior to construction to prevent inadvertent impacts during construction activities.
An Unanticipated Discovery Plan is included with the Cultural Resources Report in Exhibit S and monitoring is proposed if construction occurs within buffer areas.

**WCCP GOAL #6—Air, Water and Land Resources Quality**

*To maintain and improve the quality of the air, water and land resources of the County.*

**Policy 1. Encourage land uses and land management practices which preserve both the quantity and quality of air, water and land resources.*

**Response**: The Facility will have little impact on air, water and land resources. A new pollution source will not be created, and traffic will be minimal. The Facility will not significantly increase the amount of exposed soils in the site area. As described in Exhibits P (Section P.8.3) and Exhibit I (Section I.4.3 and I.5), any soils exposed during construction will be revegetated to prevent soil erosion from wind and rain. Facility construction will be conducted pursuant to an NPDES 1200-C permit issued by DEQ, which will ensure the use of erosion control best management practices during construction. Wastewater generated onsite will be limited to the O&M building, which will be connected to a DEQ-approved onsite septic system. As discussed in Exhibit V (Section V.1.2), no industrial wastewater will be generated during operations. Permanent impacts to land resources will be limited to approximately 252 acres of EFU land. The amount of land used for the Facility is a very small percentage of the land within the site boundary area, and the Facility components will be located to minimize impacts to existing farm operations. As discussed in Exhibit I, the Applicant will be required to follow the requirements of a weed management plan (Attachment I-3) and a revegetation plan (Attachment I-4) that have been reviewed and approved by Wasco County.

**Policy 2. Maintain air quality in compliance with state and federal standards.**

**Response**: The Facility will not create a new pollution source, and, as previously discussed, traffic associated with the Facility will be minimal. The Facility will not significantly increase the amount of exposed soils in the site area and will have little or no impact to air quality.

**Policy 3. Maintain quantity and quality of water in compliance with state and federal standards.**

**Response**: The O&M building will be served by an onsite well. No permit is required to draw from this well because Oregon allows the withdrawal of up to 5,000 gallons per day without a permit and the Facility will use less than 5,000 gallons per day. Wastewater generated onsite will be limited to the O&M building, which will be connected to a DEQ-approved onsite septic system. No industrial wastewater will be generated during operations. Impacts to wetlands or other water sources will not occur.

**Policy 4. Noise levels should be maintained in compliance with state and federal standards.**

**Implementation**

A. *Noise levels for all new industries must be kept within standards set by state and federal agencies.*

B. *Consideration for the effects of noise on the surrounding environment will be given when a new development of any kind is proposed.*

C. *Noise sensitive areas should be identified and only compatible uses permitted in their vicinity.*

**Response**: Exhibit X provides the results of a noise analysis for the Facility. This analysis concludes that applicable DEQ noise regulations will be met for Facility construction and operation, including compliance with the 50-dBA limit for noise-sensitive receptors. When a precise turbine layout has been selected and before construction, the Applicant will submit an acoustical analysis using the same methodology as the
analysis conducted for Exhibit X. The Applicant will also submit evidence of secured noise easements for any sensitive receptors.

**WCCP GOAL #7—Areas Subject to Natural Disasters and Hazards**

*To protect life and property from natural disasters and hazards.*

**Policy 1.** Control flood hazards through active management of water resources, soil conservation techniques and flood plain identification.

**Response:** There are no flood hazard areas in the analysis area.

**Policy 2.** Intensive developments should not be allowed in an identified Natural Hazard Area.

**Response:** There are no identified Natural Hazard Areas in the analysis area. Natural Hazard Areas in the WCCP include geologic hazards such as deep bedrock slides, earthflow, slump topography, and flood hazards.

**WCCP GOAL #8—Recreational Needs**

*To satisfy the recreational needs of the citizens of Wasco County and visitors.*

**Policy 1.** Manage the Deschutes and John Day Scenic Waterways to minimize recreational over-use, accumulation of solid waste and conflict with agricultural use, while maximizing their scenic and recreational values.

**Response:** The Facility will not provide any recreational amenities that would attract additional users to the John Day or Deschutes Scenic Waterways, nor would it alter the land uses in the vicinity of those rivers. The land within the analysis area is primarily used for agriculture and livestock and is proposed to continue to be used for those purposes. Solid waste generated in Facility construction and operation will not affect the John Day or Deschutes Scenic Waterways. The Facility will generate minimal construction waste and very little solid waste requiring offsite disposal. Waste that does require offsite disposal will be disposed of in a landfill.

**Policy 2.** Develop and maintain a variety of recreational sites and open spaces adjacent to population concentrations to adequately meet the County’s recreational needs.

**Implementation D** Aesthetic values in existing and future re-creational sites should be preserved and enhanced.

**Response:** Exhibit R evaluates potential impacts that may occur to the scenic and aesthetic resources in the Facility vicinity, and Exhibit T addresses potential impact to recreational areas. The Exhibit R analysis identifies where Facility components will be visible from these resources. Some Facility components may be visible from the John Day River and associated hiking and multiuse trails, and while Facility turbines and the transmission line will not be visible from the Deschutes River, the transmission line may (in limited locations) be visible from the higher elevations of the Deschutes river corridor. However, Facility components will not dominate views from either of these scenic and recreational resources. No future recreation sites where the Facility would be visible have been identified. The Facility is proposed to be located to minimize any visual impacts to these scenic and recreational resources. The turbines are proposed to be painted white or off-white in order to minimize Facility contrast when viewed against the sky.
WCCP GOAL #9—Economy of the State

To diversify and improve the economy of Wasco County.

Policy 1. Maintain agriculture and forestry as a basis of the County’s rural economy.

Response: The Facility will benefit the local economy by providing stable revenue for participating landowners, who will receive lease payments for the use of their land. At the same time, the relatively small permanent loss of land for agricultural purposes will result in a minimal impact on farming activities.

Policy 2. Commercial and industrial development compatible with the County’s agricultural and forestry based economy will be encouraged.

Response: The Facility is consistent with the purposes of the EFU, A-1 zone, which allows for the development of commercial utility facilities as a conditional use. The Facility will have a minimal impact on the operation of the farms in the area, and the property owners have voluntarily agreed to the location of the Facility on their land. The Facility will not impact any forest-zoned property.

Policy 3. Wasco County will support the expansion and increased productivity of existing industries and firms as a means to strengthen local and regional economic development.

Response: Development of the Facility expands an existing regional industry (wind power generation) in Wasco County. Through lease payment to landowners, the Facility will provide a stable long-term income for the farming operation, compared to current revenues from agricultural products that can fluctuate significantly on a seasonal basis, often depending on weather and even global market conditions outside of the farm operator’s control. The Facility will benefit the local economy in the short term by providing short-term construction-related employment, as described in Exhibit U. Facility construction is anticipated to take approximately 9 months and employ an estimated maximum of 300 workers at peak construction periods. Preference will be given to local workers when feasible.

WCCP GOAL #11—Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Policy 1. Provide an appropriate level of fire protection, both structural and wildfire, for rural areas.

Response: Exhibit U (Sections U.4.2, U.5.8, and U.5.9) identifies the fire and emergency service providers covering the analysis area. The Applicant contacted several Fire Protection Districts in the area, including the Shaniko Fire Department and the Tygh Valley Fire Protection District. None of the local fire protection districts has jurisdiction over the Facility area, although federal and state agencies such as the U.S. Forest Service, BLM, and the Oregon Department of Forestry provide fire suppression. Mr. Brian Huff, the Oregon State Fire Marshal, provided fire safety recommendations for the Facility (see Attachment K-2). Mr. Mike Davidson with Wasco County Emergency Services provided information related to emergency services in the Facility area, stating that the Facility was in Ambulance Service Area 6, which receives response from a volunteer service in Wheeler County and provides service within 4.5 hours (Davidson, 2012, personal communication). Generally, landowners are the first responders for fires and rely on available farm equipment, mainly 100-gallon water tanks placed in the back of trucks, for fire suppression. Exhibit U (Section U.6.9) provides measures to reduce the potential for fires related to the Facility. In addition, the Applicant proposes to have trained staff and appropriate equipment onsite to respond to events, such as high-angle rescue, that cannot be handled by the fire departments.
Policy 3. Minimize adverse impacts resulting from power line corridor and utility development.

Implementation

A. The Bonneville Power Administration should compensate for damage resulting from power-line corridor development at levels based on the loss of agricultural and residential values and productivity.

B. When economically and physically feasible, transmission lines should be laid underground.

C. The Planning Commission and Citizen Advisory Groups should review all future Bonneville Power Administration power line corridor developments which may be routed through Wasco County, as well as all electrical substation and power plant development proposals.

D. Public utility easements and transmission line corridors should be designed to provide for multiple land use.

E. Maximum utilization of existing utility right-of-way should be encouraged to minimize the need for additional rights-of-way.

F. Public utilities shall be responsible for appropriate maintenance including noxious weed control on all existing and future rights-of-way.

Response: Subsections A and C do not apply because development of the Facility will not require BPA to develop new corridors. The Applicant plans to construct the 230-kV transmission line on private right-of-way obtained from willing landowners who will be compensated for use of their property and any loss of agricultural income. The topography of the area between the Facility substation and the BPA interconnection point is composed of flat or rolling agricultural land interspersed with deep valleys, preventing the transmission line from location underground. No alternative locations for underground transmission lines are physically or economically feasible, as required by subsection (B), to provide a direct route from the substation to the interconnection point. Approximately 95 percent of the 34.5-kV collector lines will be located underground, and it is not feasible to place the other 5 percent, or 3 to 4 miles, underground. The proposed transmission line right-of-way runs across private land, not public land; therefore (D), does not apply. Where feasible, agricultural uses will be preserved within the right-of-way to minimize impacts to existing agricultural operations and reduce the amount of land taken out of production. There is no existing public right-of-way in the vicinity of the Facility that can be used for the proposed feeder transmission line as described in (E).

Overhead pole structures will allow the collector lines to span terrain such as canyons and intermittent streams, thus reducing environmental impacts.

WCCP GOAL #12—Transportation

To provide and encourage a safe, convenient and economic transportation system.

Policy 1. Plan for and maintain an interconnected system of roads that will link communities for all users and that will provide for the existing and future needs for transportation of goods and people in the region.

Policy 5. Maintain the safety, physical integrity, and function of the County transportation network.

Implementation
F. Ensure that the existing transportation network is conserved through maintenance and preservation.

Response: The Applicant will use several public roads during construction and operation and, where necessary, improve the roadbed to accommodate construction equipment. Facility construction is not expected to affect the County road system. Private roads will remain private for exclusive use by the Applicant or landowner.

WCCP GOAL #13—Energy Conservation

To conserve energy.

Policy 1. The County will work with appropriate State and Federal agencies to identify and protect, and if feasible, develop potential energy resources, especially renewable energy resources.

Response: The Facility supports this goal by developing an energy facility that is renewable, sustainable, and nonpolluting.

Policy 2. Reduce the consumption of non-renewable sources of energy whenever possible.

Implementation

A. Conversion of energy sources from non-renewable sources to renewable sources shall be encouraged.

B. The allocation of land and uses permitted on the land should seek to minimize the depletion of non-renewable sources of energy.

Response: The Facility is a renewable wind resource generating facility, and while it does not propose to convert nonrenewable energy sources to renewable energy, the Facility will provide additional capacity from renewable energy sources thereby reducing the need for nonrenewables such as coal and fossil fuels. During construction, nonrenewable energy will be used, primarily from fossil fuels. However, when operational, the Facility will require little nonrenewable energy to operate, needing only limited supplies of fuel for maintenance vehicles.

Policy 6. Use of renewable energy shall be encouraged.

Implementation

A. Wind generators will be permitted in the forestry, agricultural and rural zones.

Response: The Facility will generate wind power entirely within the A-1 zoning district, consistent with this policy.

K.5.2.3 Directly Applicable Statutes, Goals, and LCDC Rules (Wasco County)

OAR 345-021-0010(1)(k)(C)(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals, and statutes;
Response: Wasco County recently amended the WCLUDO. The current version fully implements Oregon’s land use statutes, statewide planning goals, and administrative rules that are potentially applicable to the Facility.

K.5.3 Noncompliance with Applicable Substantive Criteria

OAR 345-021-0010(1)(k)(C)(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals;

Response: The Facility will comply with all Wasco County’s locally applicable substantive criteria. For the reasons discussed above, the Facility does not comply with the Sherman County setback requirements at SCZO Section 3.1(4)(C), as modified by Ordinance No. 39-2007. Sherman County’s non-farm use criterion at SCZO 5.8(20)(4) are discussed above. While the Applicant believes that the Facility can comply with SCZO 5.8(20)(4), to the extent the Council finds that the Facility does not comply with these substantive criteria, under ORS 469.504(1)(b)(B), the Council must determine whether the proposed facility “otherwise [complies] with the applicable statewide planning goals.”

The setback standard in SCZO Section 3.1(4)(C) and Ordinance No. 39-2007 are discussed in detail above. Ordinance No 39-2007 is not an “applicable” standard, but if the Council finds that it is “applicable,” the Applicant seeks a finding of compliance with applicable statewide planning goals. Although SCZO Section 3.1(4)(C) and SCZO Section 5.8(20)(4) have been acknowledged by LCDC to be in compliance with the statewide planning goals, the criteria are not required by any statewide planning goal. Locating some Facility components within the setbacks or on land “generally suitable” for crop production will not increase (or decrease) impacts to agricultural lands.

Because the Facility complies with all other local criteria, and because SCZO Sections 3.1(4) (as modified by Ordinance 39-2007) and 5.8(20)(4) relate to land uses in Sherman County’s EFU zone, the applicable statewide planning goal is Goal 3, the state’s Agricultural Lands goal. Except as discussed above concerning Ordinance No. 39-2007, no other statewide planning goals are applicable. As expressed in Oregon’s Statewide Planning Goals and Guidelines, the intent of Goal 3 is as follows:

“To preserve and maintain agricultural lands...Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.”

Consistent with Goal 3, Sherman County has identified the F-1 zone as an EFU zone. Under Goal 3, non-farm uses are permitted within EFU zones as provided in ORS 215.283. To find compliance with ORS 215.283, the Council must determine whether the proposed energy facility and its related or supporting facilities are uses that fit within the scope of the uses permitted in EFU zones as described in ORS 215.283(1), (2), or (3). The Facility consists of the energy facility (the wind turbines) and the following related or supporting facilities, as further described in Exhibits B and C: underground and aboveground power collector lines, two substations, 230-kV transmission line, control system, O&M building, met towers, access roads, staging areas, and batch plant.

The principal use (the wind turbines, power collector system, and met towers) is a “commercial utility facility for the purpose of generating power for public use by sale” and is therefore allowable under ORS 215.283(2)(g). The transmission lines and substations are “utility facilities necessary for public service” allowed outright under ORS 215.283(c), subject to compliance with ORS 215.275. The access roads are allowed under ORS 215.283(3).
OAR Chapter 660, Division 33, contains the LCDC administrative rules for implementing the requirements of agricultural land as defined by Goal 3. Specifically, OAR 660-033-0130(5) and (37) provide criteria for locating a “wind power generating facility” on EFU land.

OAR 660-033-0130(5) provides:

“Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

“(a) will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

“(b) will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.”

For the reasons discussed throughout this Exhibit, the Facility will not force a significant change in accepted farm practices on surrounding farmland and will not significantly increase the cost of accepted farm practices. There will be no significant change in accepted farming practices as a result of the proposed Facility for the reasons discussed above in response to SCZO Section 5.8(20). Facility components will be located in a fashion that minimizes impacts to existing farming operations, and accepted farming practices will continue on the farm parcels where the Facility structures will be located. Permanent impacts to land resources will affect approximately 252 acres of EFU land in both counties. Thus, the amount of land used for the proposed Facility is a very small percentage of land within the analysis area.

The cost of farming practices in the analysis area could be affected because of changes in patterns of harvesting, increased need for weed control, and temporary delays to movement of farm equipment and trucks due to construction or construction traffic. However, as discussed above, the Applicant will reseed temporarily disturbed areas and, when construction is complete, farm operators will be able to cultivate the land around the turbine pads. The Applicant will closely coordinate with farmers to ensure adequate and timely access to properties during critical periods in the farming cycle for practices such as harvesting and spraying. Moreover, land leases for the placement and operation of the Facility will provide an additional source of income for the parcel owners, helping to stabilize the inherent volatility of farm income and therefore minimizing the potential for changes in the overall land use pattern of the area. Accordingly, the Facility will comply with the standards set forth at OAR 660-033-0130(5).

OAR 660-033-0130(37) provides the specific criteria for the approval of a “wind power generating facility” on farmland. Consistent with past Council decisions, all components of the Facility constitute a “wind power generating facility.” As discussed above in Section K.5.1.4, the Facility meets the applicable approval criteria in OAR 660-033-0130(37).

Because the Facility meets the approval criteria for a wind power generating facility, it is also consistent with Goal 3. Accordingly, the Facility “otherwise complies with the applicable statewide planning goals” under ORS 469.504(1)(b)(B).

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20 OAR 660-033-0130(37) became effective in January 2009. At the same time, LCDC adopted amendments to OAR 66-033-0120 (Table 1) that added reference to a “wind power generation facility” as a distinct use. The amendments provided that OAR 660-33-0130(5) and (37) applied to wind power generation facilities. The effect of these amendments was to eliminate the 12-acre and 20-acre restrictions on wind energy facilities that was contained in OAR 660-033-0130(17) and (22) and to impose, instead, new restrictions on wind energy facilities contained in OAR 660-033-0130(37).

21 Helix Final Order at 56, 63, and 64.

22 Although the Facility will remove more than 20 acres of farmland from the counties’ EFU zones, the Facility complies with OAR 660-033-0130(5) and OAR 660-033-0130(37) and therefore an exception to Goal 3 is not required. See, e.g. Golden Hills Final Order at 73, Helix Final Order at 65.
K.6 FEDERAL LAND MANAGEMENT PLANS

OAR 345-021-0010(1)(k)(D) If the proposed Facility will be located on federal land:

i. Identify the applicable land management plans adopted by the federal agency with jurisdiction over the federal land.

ii. Explain any differences between state or local land use requirements and federal land management requirements.

iii. Describe how the proposed Facility complies with the applicable federal land management plan.

iv. Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval.

v. Provide an estimate of time for issuance of federal land use approvals.

vi. If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

Response: This criterion does not apply.

K.7 CONCLUSION

Based on the foregoing analysis, the Facility complies with all applicable substantive criteria from Sherman and Wasco counties except SCZO Sections 3.1.4 and 5.8(20)(4); and the Facility otherwise complies with the applicable provisions of the statewide planning goals, in compliance with ORS 469.504(1)(b)(B). Accordingly, the information contained in this Exhibit provides the Council with sufficient information to make a determination that the Facility complies with the land use standard set forth in OAR 345-022-0030.

K.8 REFERENCES

Davidson, Mike. 2012. Personal communication (telephone) between Mike Davidson/Wasco County Emergency Services and Kevin Belanger/CH2M HILL. August 22.


Roberts, John/Planning Director, Wasco County Planning Department. 2012. Personal communication with Amy Fuller/CH2M HILL. April 17, 2012.


Sherman County. 2007. Comprehensive Land Use Plan, Sherman County, Oregon.


Figures
FIGURE K-1
Aerial Photograph
223-Turbine Layout
Brush Canyon Wind Power Facility
Application for Site Certificate

LEGEND
- Site Boundary
- Area Not Included in Site Boundary
- Micrositing Corridor
- Proposed Facilities
  - Turbine
  - Met Tower - Permanent
  - 223-kV Transmission Line
  - 34.5-kV Overhead Collector Line
  - 34.5-kV Underground Collector Line
  - Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary
- Existing Features
  - Interconnection Substation
  - Transmission Line
- Highway
- Major Road
- River
- City Limit
- County Boundary

Note: 1. Aerial Photograph Source: 2011 USDA.
FIGURE K-3a
Land Use Map
223-Turbine Layout
Detailed View 1 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate

Note:
1. Main Map Background Source: National Geographic Society
FIGURE K-3c
Land Use Map
223-Turbine Layout
Detailed View 3 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate

LEGEND
- Site Boundary
- Micrositing Corridor
- Land Use Type
  - Cropland
  - Developed
  - Open Water
  - Range/Grazing
- Proposed Facilities
  - Turbine
  - Met Tower - Permanent
  - 230-kV Transmission Line
  - 34.5-kV Overhead Collector Line
  - 34.5-kV Underground Collector Line
  - Access Road
  - North Collector Substation
  - South Collector Substation
  - O&M Building
  - Staging Area - Temporary
  - Batch Plant - Temporary
- Existing Features
  - Interconnection Substation
  - Transmission Line
  - Highway
  - Major Road
  - River
  - City or Service Center
  - County Boundary

Note:
1. Main Map Background Source: National Geographic Society
FIGURE K-3d
Land Use Map
223-Turbine Layout
Detailed View 4 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate

LEGEND
- Site Boundary
- Micrositing Corridor
Land Use Type
- Cropland
- Developed
- Open Water
- Range/Grazing
Proposed Facilities
- Turbine
- Met Tower - Permanent
- 230-kV Transmission Line
- 34.5-kV Overhead Collector Line
- 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary
Existing Features
- Interconnection Substation
- Transmission Line
- Highway
- Major Road
- River
- City or Service Center
- County Boundary

Note:
1. Main Map Background Source: National Geographic Society
FIGURE K-3e
Land Use Map
223-Turbine Layout
Detailed View 5 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate

LEGEND
- Site Boundary
- Micrositing Corridor
- Land Use Type
  - Cropland
  - Developed
  - Open Water
  - Range/Grazing
- Proposed Facilities
  - Turbine
  - Met Tower - Permanent
- 230-kV Transmission Line
- 34.5-kV Overhead Collector Line
- 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary
- Existing Features
  - Interconnection Substation
  - Transmission Line
  - Highway
  - Major Road
  - River
  - City or Service Center
  - County Boundary

Note:
1. Map Background Source: National Geographic Society
FIGURE K-4
Land Capability Classification Overview
Brush Canyon Wind Power Facility
Application for Site Certificate

Notes:
1. Main Map Background Source: Environmental Systems Research Institute (ESRI)
2. Soil Data Source: USDA SSURGO database

LEGEND
- Site Boundary
- Area Not Included in Site Boundary
- Monitoring Corridor
- Proposed Facilities
  - Turbine
  - Meteorological Tower - Permanent
  - 230-kV Transmission Line
  - 34.5-kV Overhead Collector Line
  - 34.5-kV Underground Collector Line
  - Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary
- Existing Facilities
- Interconnection Substation
- Transmission Line
- Highway
- Major Road
- River
- City Limit
- County Boundary

Names:
1. Title Map Background Source: Environmental Systems Research Institute (ESRI)
2. Soil Data Source: USDA SSURGO database
FIGURE K-4a
Land Capability Classification
223-Turbine Layout
Detailed View 1 of 5

Notes:
1. Main Map Background Source: National Geographic Society
2. Soil Data Source: USDA SSURGO database

LEGEND
- Site Boundary
- Micrositing Corridor
- Land Capability Classification
  - Prime
  - Class I
  - Class II
  - Class III
  - Class IV
  - Class V
  - Class VI
  - Class VII
  - Class VIII
  - Not rated or not available
- Proposed Facilities
  - Turbine
  - Met Tower - Permanent
  - 230-kV Transmission Line
  - 34.5-kV Overhead Collector Line
  - 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary
- Existing Features
  - Interconnection Substation
  - Transmission Line
  - Highway
  - Major Road
  - River
- City or Service Center
- County Boundary

FIGURE K-4a
Land Capability Classification
223-Turbine Layout
Detailed View 1 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate
FIGURE K-4b
Land Capability Classification
223-Turbine Layout
Detailed View 2 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate

Notes:
1. Main Map Background Source: National Geographic Society
2. Soil Data Source: USDA SSURGO database

LEGEND
- Site Boundary
- Micrositing Corridor
- Land Capability Classification
  - Prime
  - Class I
  - Class II
  - Class III
  - Class IV
  - Class V
  - Class VI
  - Class VII
  - Class VIII
  - Not rated or not available

Proposed Facilities
- Turbine
- Met Tower - Permanent
- 230-kV Transmission Line
- 34.5-kV Overhead Collector Line
- 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary

Existing Features
- Interconnection Substation
- Transmission Line
- Highway
- Major Road
- River
- City or Service Center
- County Boundary

Scale:
0 2 3.2 4 miles
0 5 8.1 km

FIGURE K-4b
Land Capability Classification
223-Turbine Layout
Detailed View 2 of 5
Brush Canyon Wind Power Facility Application for Site Certificate
FIGURE K-4c
Land Capability Classification
223-Turbine Layout
Detailed View 3 of 5

Brush Canyon Wind Power Facility
Application for Site Certificate

Notes:
1. Main Map Background Source: National Geographic Society
2. Soil Data Source: USDA SSURGO database

LEGEND
- Site Boundary
- Micrositing Corridor

Land Capability Classification
- Prime
- Class I
- Class II
- Class III
- Class IV
- Class V
- Class VI
- Class VII
- Class VIII
- Not rated or not available

Proposed Facilities
- Turbine
- Met Tower - Permanent
- 230-kV Transmission Line
- 34.5-kV Overhead Collector Line
- 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- South Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary

Existing Features
- Interconnection Substation
- Transmission Line
- Highway
- Major Road
- River
- City or Service Center
- County Boundary

- Gilliam County
- Wasco County
- Wheeler County
- Sherman County
- Sherman County
FIGURE K-4e
Land Capability Classification

223-Turbine Layout
Detailed View 5 of 5

Brush Canyon Wind Power Facility
Application for Site Certificate

Notes:
1. Main Map Background Source: National Geographic Society
2. Soil Data Source: USDA SSURGO database

LEGEND
- Site Boundary
- Micrositing Corridor
- Land Capability Classification
  - Prime
  - Class I
  - Class II
  - Class III
  - Class IV
  - Class V
  - Class VI
  - Class VII
  - Class VIII
  - Not rated or not available
- Proposed Facilities
  - Turbine
  - Met Tower - Permanent
  - 230-kV Transmission Line
  - 34.5-kV Overhead Collector Line
  - 34.5-kV Underground Collector Line
  - Access Road
  - North Collector Substation
  - South Collector Substation
  - O&M Building
  - Staging Area - Temporary
  - Batch Plant - Temporary
- Existing Features
  - Interconnection Substation
  - Transmission Line
  - Highway
  - Major Road
  - River
  - City or Service Center
  - County Boundary

FIGURE K-4e
Land Capability Classification
223-Turbine Layout
Detailed View 5 of 5
Brush Canyon Wind Power Facility
Application for Site Certificate
FIGURE K-6
Sherman County Historic Resources
Brush Canyon Wind Power Facility
Application for Site Certificate

LEGEND
- Historic Resource
- Site Boundary
- Area Not Included in Site Boundary
- Micrositing Corridor

Proposed Facilities
- Turbine
- Met Tower - Permanent
- 230-kV Transmission Line
- 34.5-kV Overhead Collector Line
- 34.5-kV Underground Collector Line
- Access Road
- North Collector Substation
- O&M Building
- Staging Area - Temporary
- Batch Plant - Temporary

Existing Features
- Interconnection Substation
- Transmission Line
- Highway
- Major Road
- River
- City Limit
- County Boundary

Note:
1. Main Map Background Source: National Geographic Society

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1. Main Map Background Source: National Geographic Society
IN THE COUNTY COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF SHERMAN

IN THE MATTER OF AN ORDINANCE
SETTING BOUNDARIES FOR WIND
POWER GENERATION SITING, AND
DECLARING AN EMERGENCY

ORDINANCE NO. 39 - 2007

WHEREAS, Sherman County has become a desirable area for the placement of wind turbines for the purpose of generating electrical power; and

WHEREAS, Sherman County has an interest in insuring that the current and future wind generation projects are compatible with each other; that they protect the health, safety, and welfare of Sherman County citizens, as well as the property rights of Sherman County property owners; and

WHEREAS, to accomplish clear, timely, predictable conditions of the permitting process in Sherman County, boundary set backs for wind projects are desirable;

NOW, THEREFORE, the County Court of the COUNTY OF SHERMAN, OREGON, hereby ORDAINS as follows:

Section 1. Purpose. It is the intention of Sherman County to encourage the collaboration and cooperation of neighboring property owners and project developers to establish appropriate set back requirements between neighboring projects. The purpose of this Ordinance is to establish standards which shall be applied to boundaries where the developers of adjacent, separate wind projects cannot agree on set back requirements for the wind towers of their respective projects. The requirements of this ordinance are intended to apply to all wind power projects in the County whether sited pursuant to Energy Facility Siting Council (EFSC) under ORS Chapter 469 or County Conditional Use Permit.

Section 2. Definitions.

a. Boundary Set Backs. The minimum distance measured from an operating wind turbine in a project to the outer boundary lines of said project.
b. **Mutually Negotiated Set Back.** A set back boundary which is negotiated between developers of a project with adjacent project developers and land owners outside the project.

**Section 3. Procedure.**

a. Prior to application for a permit for wind power projects in Sherman County, the project developer is encouraged to negotiate set back distances from wind turbines on the outer edges of the project to the outer boundary lines of the project with owners or developers of adjacent projects or adjacent property owners outside the project.

b. In the event the project developer is unable or unwilling to negotiate boundary set backs, then the Sherman County wind power siting set back requirements of this ordinance shall apply.

**Section 4. Set Back Distances.**

a. Set back from property lines in all East-West upwind and downwind directional property line installation shall be no less than 7.5 times the rotor diameter and no less than 1.5 times the rotor diameter for all North-South property line delineations. These requirements shall only apply to project boundaries and will not be required for towers installed internally within the project.

b. A variance may be issued to set back standards in cases where extraordinary topographical or geographical conditions would justify the granting of a variance. A variance may be applied for pursuant to Article 7, Variances, of the Sherman County Zoning Ordinance.

**Section 5. Set Backs From Pre-Existing Wind Turbines.** The minimum set back requirements from pre-existing wind turbines shall be 15 times the rotor diameter upwind and downwind for all East-West set back considerations and 3 times the rotor diameter for all North-South set back considerations.

**Section 6. Set Backs From City Boundaries.** The minimum set back distance from an operating wind turbine to the boundary lines of any incorporated city in Sherman County shall be a distance of one (1) mile, unless a variance to such distance is obtained through the city council of an affected city, after public hearing.

**Section 7. Emergency Clause.** This Ordinance, being essential to the preservation of the health, safety, welfare and financial integrity of the County, an emergency is hereby declared to exist and this Ordinance is effective upon its adoption.
PASSED AND ADOPTED by the County Court on the 21st day of November, 2007.

SHERMAN COUNTY COURT

By Gary Thompson, County Judge

By Sherry Kaseberg, County Commissioner

By Steve Burnet, County Commissioner

ATTEST:

Carl Thompson
County Clerk/Deputy
ATTACHMENT K-2

State Fire Marshal Recommendations
To whom it may concern,

Since the proposal is located outside of the structural protection response for any fire department, they are not obligated to respond in the event of a structure fire. Local wildland agencies should be contacted for the appropriate wildland response if any.

In the event of a County or State declared emergency for fire, the applicants structures may be declared “undefendable” for the protection from wildfire, unless certain precautions have been made to mitigate the wildland fuels. Recommendations can be made through the Office of State Fire Marshal or the local wildland agency office.

I recommend that a fire sprinkler system be installed in all buildings to minimize and extinguish interior fires that may occur. Also the installation of a fire sprinkler system would allow for safe exiting from the building(s) in the event of a fire and should lower the building(s) fire insurance premiums.

Acceptance in to a fire district is always dependant on the fire department; they are not required to annex anyone unless they meet the minimum water supply, access requirements and reasonable response requirements. I recommend using the state fire code requirements and/or county road standards for access and water supply in the rural area and also following Senate Bill 360 for spacing any structures from the natural surrounding wildland fuels. This would assist fire departments in the event of a State declared fire emergency and the home may be protected in that declared emergency. The use of noncombustible siding and roofing, if not already required by another code, is also strongly recommended.

Under ORS 476.280 fire permits as it relates to permission to burn, can only be obtained from the County Commission or their designee. If protected by the Oregon Department of Forestry permission to burn must also be obtained from them. In the event that a fire permitted or not becomes out of control, and it requires suppression by a fire protection agency, the owner/occupant becomes responsible for suppression cost and any other administrative cost under ORS 476.280 and 476.290.

If you have any further questions on anything related to this do not hesitate to call me or email me.

Thank you,

Brian Huff
Deputy State Fire Marshal
541-420-4263
BHuff@osp.state.or.us