

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

In the Matter of Request for Amendment 3 to)
Transfer Certificate Holder Ownership of the)
Shepherds Flat North Site Certificate)

FINAL ORDER ON
REQUEST FOR AMENDMENT 3

Issued by

Oregon Department of Energy
550 Capitol Street NE
Salem, Oregon 97301-3742

February 2021

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1 **I. INTRODUCTION**

2

3 The Energy Facility Siting Council (Council) issues this order in accordance with Oregon Revised
4 Statute (ORS) 469.405 and Oregon Administrative Rule (OAR) 345-027-0400 for Request for
5 Amendment 3 to Transfer Ownership of the Shepherds Flat North Certificate Holder (Request
6 for Amendment to Transfer or RFA3). This order addresses a change in the certificate holder
7 owner; the existing certificate holder, North Hurlburt Wind, LLC, would be maintained.
8 Specifically, this order addresses a request to transfer certificate holder ownership from
9 Caithness Northwestern Wind, LLC and Columbia Gorge Wind Acquisition Co, LLC (collectively
10 referred to as Caithness as the certificate holder owner and parent company) to BEP SF
11 Holdings, LLC (new owner).

12

13 Pursuant to OAR 345-027-0400(1), "A request for amendment to a site certificate to transfer
14 the site certificate is required for a transaction that results in a change in the ownership,
15 possession or control of the facility or the certificate holder. A "new owner" refers to the
16 person or entity that will gain ownership, possession or control of the facility or the certificate
17 holder."

18

19 **I.A. Name and Address of Certificate Holder**

20

21 The certificate holder, certificate holder owner and contact names, as represented in the
22 existing site certificate, are as follows:

23

24 *Certificate Holder*

25

26 North Hurlburt Wind, LLC
27 565 Fifth Avenue, 29th Floor
28 New York, NY 10017

29

30 *Certificate Holder Owner*

31

32 Vandana Gupta
33 North Hurlburt Wind, LLC
34 c/o Caithness Energy, LLC
35 565 Fifth Avenue, 29th Floor
36 New York, NY 10017

37

38

39

40

1 I.B. Name and Address of New Owner

2

3 The new owner and contact name is as follows:

4

5 Whitney Wilson, Vice President

6 BEP SF Holdings, LLC

7 c/o Brookfield Renewables U.S.

8 200 Liberty Street, 14th Floor

9 New York, NY 10281

10

11 I.C. Description of the Approved Facility and Location

12

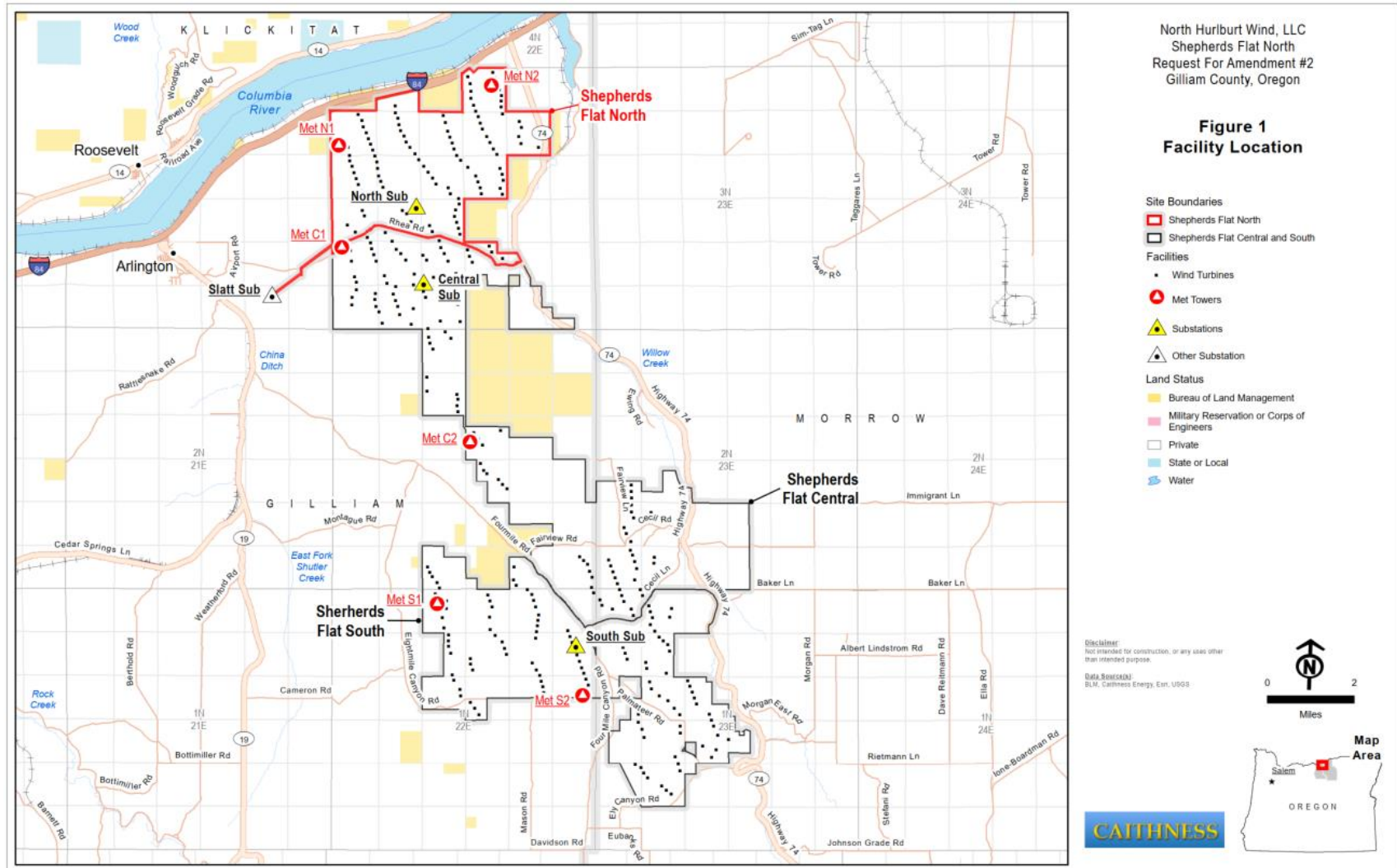
13 Shepherds Flat North is a 265 megawatt (MW) operating wind energy facility with 106 wind
14 turbines; wind turbine dimensions include a minimum aboveground blade tip clearance of 21.5
15 meters; rotor diameter and rotor swept area of 127 meters; and, maximum blade tip height of
16 150 meters. The facility includes a 34.5 kilovolt (kV) electrical collection system, a collector
17 substation, a 230 kV interconnection transmission line, two meteorological towers, a field
18 workshop, supervisory control and data acquisition system (SCADA), access roads, and
19 temporary construction areas.

20

21 The facility is located within a site boundary of approximately 9,264 acres, south of Interstate
22 Highway 84, east of Arlington, in Gilliam County, as presented in Figure 1: *Regional Location of*
23 *Facility Site Boundary*.¹ As presented in the figure, the facility is adjacent to Shepherds Flat
24 Central, which is adjacent to Shepherds Flat South, two other EFSC-jurisdictional facilities
25 owned by the same parent company as Shepherds Flat North.

¹ Site boundary means, “the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting corridors proposed by the applicant.” (OAR 345-001-0010(54))

Figure 1: Regional Location of Facility Site Boundary



1 I.D. Site Certificate History

2

3 The Council approved a site certificate for the Shepherds Flat Wind Facility on July 25, 2008,
4 authorizing construction and operation of a 909 MW wind energy generation facility. The
5 Council issued the First Amended Site Certificate on March 12, 2010, authorizing an expansion
6 of the site boundary to accommodate an alternative route for the transmission line, and also
7 divide and transfer the Shepherds Flat Wind Facility into three independent facilities -
8 Shepherds Flat North, Shepherds Flat Central, and Shepherds Flat South.

9

10 The Council issued its *Final Order on Amendment 2* and granted a Second Amended Site
11 Certificate on December 20, 2019, which authorized wind turbine repower through installation
12 of longer turbine blades. Wind turbine repower is planned to occur in 2021-2022.

13

14 **II. THE TRANSFER PROCESS**

15

16 II.A. Description of the Transfer Request

17

18 In Request for Amendment 3 to Transfer Certificate Holder Ownership, the certificate holder
19 and new owner request a site certificate transfer to reflect the change in certificate holder
20 ownership from Caithness to BEP SF Holdings, LLC. Request for Amendment 3 represents the
21 first request to transfer certificate holder ownership requested by the certificate holder.

22

23 II.B. Procedural History

24

25 On January 6, 2021, prior to receipt of Request for Amendment 3 to Transfer, the Department
26 received notice of a potential sale and purchase of the Shepherds Flat North certificate holder
27 from Caithness to BEP SF Holdings, LLC.² On February 2, 2021, the Department received
28 complete property owner information obtained from the most recent county tax assessor roll in
29 Gilliam County from the certificate holder and new owner, along with Request for Amendment
30 3 to Transfer, seeking Council approval of a change in certificate holder ownership for the
31 Shepherds Flat North Site Certificate.

32

33 On February 5, 2021, the Department issued Public Notice of Request for Amendment 3 to
34 Transfer to all persons on the Council’s general mailing list, the special mailing list established
35 for the facility, an updated list of property owners supplied by the new owner, and reviewing
36 agencies as defined in OAR 345-001-0010(52). The notice initiated a comment period on the
37 transfer request and provided a date and time of the Transfer Hearing, as required for site
38 certificate transfers pursuant to OAR 345-027-0400(7). The notice provided an “anticipated”
39 deadline for submission of comments and date of transfer hearing of February 26, 2021, which

² Site certificate Condition 15 requires that the certificate holder, prior to any transfer of ownership of the facility or ownership of the certificate holder, inform the Department of the proposed new owners.

1 was later confirmed for the same date based on final agenda issued on February 16, 2021 for
2 the February 26, 2021 Council meeting.

3
4 The comment period extended from February 5 through February 26, 2021. During the
5 comment period, comments were received in oral testimony from the new owner at the
6 February 26, 2021 Transfer Hearing. Following the Transfer Hearing, Council received a staff
7 presentation on the details of the transfer request, including the Department's
8 recommendations as presented in a February 12, 2021 staff report (presented in the format of
9 a draft order). At the February 26, 2021 meeting, following review of the transfer request and
10 comments received, Council approved the Final Order on the Request for Transfer and granted
11 issuance of a third amended site certificate.

12 13 **II.C. Comments on the Transfer Request**

14
15 On the record of the transfer request, on behalf of the new owner, legal Counsel Richard Allan
16 of Marten Law LLP provided oral testimony at the transfer hearing. Specifically, Mr. Allan
17 sought to clarify the ownership structure of the new owner and provided additional facts for
18 Council consideration of the new owner's ability to obtain a bond or letter of credit for facility
19 decommissioning. The substance of these comments are incorporated into the findings of this
20 order.

21 22 **III. EVALUATION OF TRANSFER REQUEST AND APPLICABLE COUNCIL STANDARDS**

23
24 Under OAR 345-027-0400(8), the Council may approve a transfer of the site certificate if the
25 Council finds that:

- 26
27 *(a) The new owner complies with the Council standards described in OAR 345-022-0010,*
28 *345-022-0050 and, if applicable, OAR 345-024-0710(1); and*
29 *(b) The new owner is or will be lawfully entitled to possession or control of the site or the*
30 *facility described in the site certificate.*

31
32 The evaluation of OAR 345-027-0400(8)(a) is presented in Section III.A. *Organizational Expertise*
33 and III.B. *Retirement and Financial Assurance* of this order; OAR 345-024-0710(1), *Monetary*
34 *Path Payment Requirement* is related to the Carbon Standard and does not apply to wind
35 energy generation facilities and therefore is not evaluated in this order.

36 37 *Possession or Control of the Site, Facility or Certificate Holder [OAR 345-027-0400(8)(b)]*

38
39 To approve a transfer of the site certificate, the Council must find that the new owner is
40 lawfully entitled to possession or control of the site or the facility described in the site
41 certificate. To evaluate whether the new owner is lawfully entitled to possession or control of
42 the site or facility, OAR 345-027-0400(5) states, "The Department may require the new owner
43 to submit a written statement from the current certificate holder...verifying the new owner's

1 right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession
2 or control of the site or the facility.”

3
4 Request for Amendment 3, Attachment 1 (“Letter from Certificate Holder, January 6, 2021”)
5 from Vandana Gupta, authorized representative as Vice President and Business Management of
6 North Hurlburt Wind, LLC and Caithness confirms that, “Caithness is under contract to sell the
7 Shepherds Flat North wind facility to BEP SF Holdings, LLC.” Request for Amendment 3,
8 Attachment M-1 includes a legal opinion letter from King & Spalding which confirms that the
9 Purchase and Sale Agreement entered into as of December 31, 2020 by Caithness and BEP SF
10 Holdings, LLC stipulates that BEP SF Holdings, LLC is the buyer guarantor and will become the
11 100 percent indirect owner of North Hurlburt Wind, LLC, and that based upon review of BEP SF
12 Holdings, LLC Certificate of Formation (RFA3 Attachment A-1), BEP SF Holdings, LLC has the
13 “legal authority to construct and operate” the facility without violating its Certificate of
14 Formation or certificate holder’s Certificate of Formation. Based on review of the letter from
15 Certificate Holder, Legal Opinion letter and information in RFA3 regarding BEP SF Holdings, LLC
16 indirect ownership of North Hurlburt Wind, LLC, the Council finds that the new owner is
17 lawfully entitled to possession or control of the site and Shepherds Flat North facility.

18
19 *Certification [OAR 345-027-0400(4)]*

20 To request an amendment to transfer a site certificate, the new owner must provide a
21 certification that it agrees to abide by all the terms and conditions of the site certificate to be
22 transferred. Request for Amendment 3 Section 2 includes a statement that the new owner,
23 “certifies that it agrees to abide by all the terms and conditions of the Site Certificate currently
24 in effect and all terms and conditions, if any, that will result from this Transfer Request.”

25
26 **III.A. Organizational Expertise [OAR 345-022-0010]**

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

39
40 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
41 *an applicant has organizational, managerial and technical expertise, if the applicant*

1 *has an ISO 9000 or ISO 14000 certified program and proposes to design, construct*
2 *and operate the facility according to that program.*

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

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

19
20 **Findings of Fact**

21
22 Subsections (1) and (2) of the Council’s Organizational Expertise standard require that, for a
23 transfer request, the certificate holder owner demonstrate its ability to design, construct,
24 operate and retire the facility in compliance with Council standards and all site certificate
25 conditions, in a manner that protects public health and safety, as well as its ability to restore
26 the site to a useful, non-hazardous condition. Subsections (3) and (4) address third party
27 permits. Because the facility is in operation, the need for new third-party permits is not
28 anticipated.

29
30 The certificate holder, North Hurlburt Wind, LLC, is a project-specific limited liability company
31 (LLC), originally incorporated on April 30, 2008 in the State of Delaware, and has historically
32 relied upon the organizational expertise of its owner or family of owner companies (parent
33 company) to satisfy the requirements of the standard. The new owner, BEP SF Holdings, LLC is
34 also a Delaware limited liability company. As explained in RFA3, BEP SF Holdings, LLC is owned
35 directly or indirectly by SF Aggregator, LLC, which is owned by (i) indirect subsidiaries of
36 Brookfield Renewable Corporation (BEPC) and (ii) investment vehicles of Brookfield
37 Infrastructure Fund IV (a private equity fund), each of which is ultimately managed and
38 controlled by affiliates of Brookfield Asset Management Inc. (BAM). BEPC is ultimately managed
39 and controlled by Brookfield Renewable Partners L.P. (BEP), which is managed and controlled
40 by BAM. BEP is based in Toronto, Canada, with U.S. headquarters in New York City, and is
41 represented in RFA3 as one of the world’s largest publicly traded renewable power platforms.

1 For purposes of this review, the certificate holder and new owner rely upon the experience and
2 expertise of BEP and its affiliates.³

3
4 *Relevant Experience in Wind Facility Construction and Operation*

5
6 As described above, the certificate holder and new owner represent and rely on experience of
7 BEP, BEP's affiliates, BEP personnel and those of its affiliates, rather than specific experience of
8 BEP SF Holdings, LLC to satisfy the standard. Council has historically evaluated experience of the
9 certificate holder or certificate holder owner as an entity or organization, rather than individual
10 personnel. The Council considers personnel experience relevant to the evaluation of whether
11 the certificate holder and new owner have the ability to identify and hire qualified individuals
12 for the construction, operation and retirement of an energy facility. However, due to potential
13 for staff turnover and subsequent lack of security in personnel retention, the Council relies on
14 the experience of entity or parent company in combination with individual personnel
15 experience in its evaluation of compliance with the standard.

16
17 In RFA3, the experience of BEP and its affiliates is described as including over 120 years of
18 development, operation and management of approximately 7,300 MWs of hydropower, wind,
19 solar and storage facilities across 34 states. To demonstrate its specific experience in wind
20 facility design, construction and operation, RFA3 Table D-1 presents over 20 wind facilities up to
21 200 MWs where BEP and its affiliates maintain 100 percent or partial ownership. Additionally,
22 the new owner confirms that the facility is currently operated and maintained under a long-
23 term, full service agreement with General Electric International, which would be maintained in
24 effect through the transfer.

25
26 In RFA3, the experience and qualifications of 5 personnel of BEP or its affiliates are provided,
27 which is summarized below:

- 28
29
- 30 • Ms. Whitney Wilson is the Vice President of Asset Management in Wind Operations of
31 Brookfield Renewable U.S. with over 16 years of wind energy facility development
32 experience, including turbine selection, siting and completing energy assessments on
33 more than 100 wind facilities. Ms. Wilson holds a Bachelors in Physics from Fort Hays
34 State University and completed Masters studies in Electrical Engineering with a Power
35 System Emphasis at Kansas State University.
 - 36 • Dr. Neha Marathe is a Senior Director of Wind Optimization and Asset Management
at Brookfield Renewable U.S. with 10 years of wind energy experience. Dr. Marathe

³ On the record of the Transfer Hearing, legal Counsel for the new owner, Richard Allan of Marten Law LLP requested to correct the record to confirm that the new owner is indirectly owned by Brookfield Renewable Corporation (BEPC) and investment vehicles of Brookfield Infrastructure Fund IV (a private equity investment vehicle), and that the new owner's organizational expertise would rely upon that of BEP and its affiliates, which represents a universe of companies. 2021-02-26 EFSC Meeting Audio.

1 holds a MS in Mechanical Engineering and a PhD in Wind Science and Engineering, both
2 from Texas Tech University.

- 3 • Mr. Miguel Rosales is the Regional Operations & Asset Manager for the Western Region
4 contracted wind projects in Brookfield Renewable U.S., with over 20 years of relevant
5 experience in wind energy development.
- 6 • Ms. Lily Henning is a Senior Manager of Environmental Affairs and Permitting for
7 Brookfield Renewable U.S., with 10 years of experience in development permitting and
8 operational
9 environmental compliance related to energy and manufacturing, including roles with
10 the U.S. Department of Defense, the Pacific Northwest National Laboratory, General
11 Electric and E.On. Ms. Henning holds a Bachelors in History from Pennsylvania State
12 University and a Juris Doctor with an environmental law certificate from the Elizabeth
13 Haub School of Law at Pace University.
- 14 • Mr. Llorente is Sr. Director of Technical Services for Brookfield Renewable U.S., with
15 over 20 years of experience in the energy industry, especially focused in renewables.
16 Mr. Llorente earned a M. Sc. In Electrical Engineering from the Universidad Pontificia
17 Comillas, Spain.
- 18 • Mr. Berk Gursoy is VP Project Development at Brookfield Renewable U.S., with over
19 twenty-five years of experience in the energy sector focusing on operation and
20 development of renewable and transmission facilities. Mr. Gursoy holds an M. Sc. In
21 Electrical & Electronics Engineering from the Middle East Technical University in Ankara,
22 Turkey.

23
24 The Council finds that reliance on the experience and expertise of the new owner's parent
25 companies is consistent with previous Council decisions for the facility and other facilities
26 where the certificate holder and owner are project or investment-specific LLCs. The Council
27 finds that the professional experience of individuals currently employed at BEP or its affiliates in
28 combination with the experience of BEP and its affiliates demonstrate an ability to design,
29 construct and operate wind facilities.

30
31 Council previously found that compliance with Conditions 32 through 35 of the site certificate
32 would ensure that the facility is designed, constructed, and operated in a manner that protects
33 public health and safety, as referenced below. Because facility construction is complete, of
34 relevance in this review is Condition 35. Previously imposed conditions are presented in
35 Attachment 1 (Amended Site Certificate) of this order.

36
37 **Condition 32:** Before beginning construction, the certificate holder shall notify the
38 Department of the identity and qualifications of the major design, engineering and
39 construction contractor(s) for the facility. The certificate holder shall select contractors
40 that have substantial experience in the design, engineering and construction of similar
41 facilities. The certificate holder shall report to the Department any change of major
42 contractors.

1 **Condition 33:** The certificate holder shall contractually require all construction contractors
2 and subcontractors involved in the construction of the facility to comply with all applicable
3 laws and regulations and with the terms and conditions of the site certificate. Such
4 contractual provisions shall not operate to relieve the certificate holder of responsibility
5 under the site certificate.

6 **Condition 34:** During construction, the certificate holder shall have a full-time, on-site
7 assistant construction manager who is qualified in environmental compliance to ensure
8 compliance with all site certificate conditions. The certificate holder shall notify the
9 Department of the name, telephone number and e-mail address of this person.

10 **Condition 35:** Within 72 hours after discovery of conditions or circumstances that may
11 violate the terms or conditions of the site certificate, the certificate holder shall report the
12 conditions or circumstances to the Department.

13
14 To evaluate whether transfer of the site certificate would impact the new owner’s ability to
15 comply with Council standards and site certificate conditions, the Council evaluates whether
16 the new owner has received any regulatory citations for its facilities and the outcome of such
17 citations. In RFA3, the certificate holder and new owner describe 8 compliance issues from the
18 last 10-years associated with all Brookfield Renewable U.S. assets. The compliance issues range
19 from regulator site visits to enforcement action/fines for issues related to eagle mortality,
20 stormwater management, blade failure and sulfur hexafluoride reporting.

21
22 The purpose of evaluating a new owner’s compliance history is to determine whether
23 corrective actions were appropriately implemented in response to the issue, and whether
24 compliance issues represent a continuous failure of the ability of a new owner to comply with
25 applicable requirements. Given that the new owner’s compliance history is limited to 8 issues in
26 ten years for over 7,300 MW of energy facilities, all of which are represented as having been
27 resolved, the Council finds that the compliance history supports a finding that the new owner
28 has the ability to comply with and/or to expediently resolve any potential compliance issues
29 with terms and conditions of the site certificate.

30
31 *ISO 9000 or ISO 14000 Certified Program*

32
33 OAR 345-022-0010(2) is not applicable because the certificate holder and new owner have not
34 proposed to design, construct or operate the facility according to an ISO 9000 or ISO 14000
35 certified program.

36
37 *Third-Party Permits*

38
39 OAR 345-022-0010(3) addresses the requirements for potential third-party permits. The
40 certificate holder has not identified any third-party permits necessary for ongoing facility
41 operation.

1 *Relevant Experience in Habitat Mitigation*

2

3 Under the standard, the Council evaluates the new owner’s experience with mitigation projects
4 and the qualifications and experience of personnel upon whom new owner would rely on for
5 implementation, to the extent that the identities of such persons are known at the time of
6 transfer request, to determine whether the new owner can successfully complete mitigation
7 necessary to satisfy site certificate requirements.

8

9 In RFA3 to Transfer, the new owner provides a summary of its experience in long-term
10 mitigation for three projects where mitigation requirements included extensive relocation of an
11 endangered plant species, Bakersfield cactus, at a solar project in California; planting of over
12 5,600 tree seedlings for a project in New Hampshire, and bird and bat mitigation for a project in
13 Hawaii. The Council notes that the existing site certificate includes requirements to comply with
14 long-term mitigation associated with habitat enhancement and monitoring, revegetation and
15 weed control, which the existing certificate holder has been implementing and currently
16 maintains compliance. Based on Brookfield Renewable U.S.’ represented experience in
17 mitigation, the Council finds that the new owner has the experience and qualifications
18 necessary to continue to satisfy the requirements under the standard for mitigation.

19

20 *Ability to Restore the Facility Site to a Useful, Non-hazardous Condition*

21

22 The new owners’ ability to retire the facility to a useful, non-hazardous condition is evaluated in
23 Section III.B., *Retirement and Financial Assurance* of this order, in which the Council finds the
24 new owner would comply with the Retirement and Financial Assurance standard.

25

26 **Conclusions of Law**

27

28 Based on the foregoing findings of fact, and based upon compliance with existing site certificate
29 conditions, the Council finds that the transfer of ownership of the certificate owner from
30 Caithness to BEP SF Holdings, LLC continues to satisfy the requirements of the Council’s
31 Organizational Expertise standard.

32

33 **III.B. Retirement and Financial Assurance [OAR 345-022-0050]**

34

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

36

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

40

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

1 **Findings of Fact**

2 The Retirement and Financial Assurance standard requires a finding that the facility site, taking
3 into account mitigation, can be restored to a useful, non-hazardous condition at the end of the
4 facility's useful life, should either the new owner stop construction or should the facility cease
5 to operate.⁴ In addition, it requires a demonstration that the new owner can obtain a bond or
6 letter of credit to restore the site to a useful, non-hazardous condition.

7
8 *Restoration of the Site Following Cessation of Construction or Operation*

9
10 OAR 345-022-0050(1) requires the Council to find that the facility site can be restored to a
11 useful non-hazardous condition at the end of the facility's useful life. The facility is located
12 entirely on exclusive farm use (EFU) zoned land in Gilliam County, Oregon. Therefore, to satisfy
13 this standard, the new owner must show that the site can be restored to a non-hazardous
14 condition suitable for EFU-zoned lands. In the ASC, the facility's useful life was represented as
15 50 years.

16
17 In Request for Amendment 3 to Transfer, there are no changes to the methods, tasks or actions
18 previously evaluated by Council for facility decommissioning. Therefore, the initial discussion of
19 facility decommissioning is provided for reference, based upon Council's review and approval in
20 the *Final Order on the ASC* (July 2008). Restoring the site to a useful, non-hazardous condition
21 upon cessation of construction or operations (or upon retirement) would involve removal of all
22 turbine components, meteorological towers, aboveground electrical components, transformers
23 and other substation equipment. In the ASC, the certificate holder stated that O&M buildings
24 would be demolished and disposed of at an appropriate facility, or converted to agricultural
25 buildings for use by the landowners. As explained in ASC Exhibit W, concrete foundations would
26 be removed to a minimum depth of three feet below grade. Underground cables that are at
27 least three feet below grade would be left in place. Gravel surfacing material would be
28 removed, the impacted area would be decompacted as needed, the area regraded to
29 appropriate contours and topsoil replaced, and the area would be revegetated unless the
30 landowner indicates a desire to leave the new or expanded roads in place.

31
32 In the *Final Order on the ASC* (July 2008) and subsequent orders, the Council found that,
33 pursuant to OAR 345-022-0050(1), the current certificate holder could restore the site to a
34 useful, non-hazardous condition.⁵ To ensure the certificate holder met its obligations, the
35 Council adopted Conditions 7-9, 30 and 31 in the site certificate. These conditions require the
36 certificate holder to prevent the development of any condition on-site that would preclude
37 restoration of the site to a useful, non-hazardous condition (Condition 7) and require the
38 certificate holder to submit a final retirement plan that describes the activities necessary to
39 restore the site to a useful, non-hazardous condition for Council approval (Condition 9).

⁴ OAR 345-022-0050(1).

⁵ *Final Order on the Application* at 88

1 In the *Final Order on the ASC* (July 2008) and subsequent orders, the Council also found that,
2 pursuant to OAR 345-022-0050(2), the current certificate holder had a reasonable likelihood of
3 obtaining a bond or letter of credit, in a form and amount satisfactory to the Council, to restore
4 the site to a useful, non-hazardous condition. In the *Final Order on Amendment 1*, Council
5 found that the value of the financial assurance bond or letter of credit for restoring the site was
6 \$7.443 million (in 1st quarter 2010 dollars). To ensure the certificate holder met its obligations,
7 the Council adopted Conditions 30 and 31 in the site certificate. Condition 30 requires the
8 certificate holder to maintain a bond or letter of credit in the amount of \$7.443 million, to be
9 adjusted for inflation to the date of issuance and final design configuration, which ensures
10 funds are available to the Council to restore the site if the certificate holder does not retire the
11 facility as required by Conditions 7 through 9.

12
13 In RFA3 to Transfer, the new owner refers to the fact that the existing certificate holder was
14 issued, as the account holder, an active letter of credit of \$10.45 million (3rd Qtr 2020 dollars),
15 effective August 25, 2020, issued by Landesbank Hessen-Thuringen, which has been submitted
16 to and is maintained by the Department. Landesbank Hessen-Thuringen (Helaba) is a financial
17 institution listed on the Council's 2020 pre-approved list. The new owner describes that the
18 existing letter of credit will remain in place following the transfer of certificate holder
19 ownership and would not be affected by the transfer, or terms of the Purchase and Sale
20 Agreement. In addition, as represented by the new owner, the facility is a United States
21 Department of Energy (US DOE) loan guarantee facility, where the new owner assumes that the
22 benefits of the loan guarantee would apply until October 2027 and provide a reasonable level
23 of assurance of its ability to obtain and maintain a bond or letter of credit in the approved
24 amount.⁶ Lastly, the new owner provides a comfort letter dated February 21, 2021 from MUFG
25 Bank, Ltd.'s (MUFG) Managing Director Takaki Sakai affirming that based on the ongoing
26 relationship between the financial institution and the new owners' parent company, Brookfield
27 Renewable Partners, L.P., there is a "reasonable likelihood that MUFG would provide letters of
28 credit" for \$8.6 million to the new owner or its parent company for the facility's
29 decommissioning obligation under the site certificate.

30
31 Council reviewed the comfort letter, which included an evaluation of the financial institution
32 and signatory to the letter. Based upon review, Council confirms that MUFG is large-scale bank
33 with the ability to issue letters of credit and Takaki Sakai is a Managing Director. Based on the
34 extent of Brookfield Renewable U.S.' financial assets identified in RFA3 Table D-1, the assurance
35 provided in the MUFG comfort letter and having access to a US DOE loan guarantee facility, and
36 the fact that the Department's maintains an existing letter of credit for facility
37 decommissioning, the Council finds that the certificate holder, under new ownership, continues
38 to demonstrate a reasonable likelihood of obtaining a bond or letter of credit in the amount
39 specified for restoration costs.

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⁶ 2021-02-26. EFSC Meeting Audio. Richard Allan testimony.

1 **Conclusions of Law**

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3 Based on the foregoing findings of fact, and subject to the existing site certificate conditions,
4 the Council finds that the certificate holder and new owner continue to comply with the
5 Council’s Retirement and Financial Assurance standard.

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7 **IV. GENERAL CONCLUSIONS**

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9 The Council finds that the request to transfer ownership of the certificate holder owner from
10 Caithness to BEP SF Holdings, LLC is consistent with current Council rules and the terms and
11 conditions of the site certificate.

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1 **V. FINAL ORDER**

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3 Based on the above findings of fact, reasoning, and conclusions of law, the Council approves
4 Request for Amendment 3 to Transfer the Shepherds Flat North Site Certificate, transferring
5 ownership of the certificate holder from Caithness to BEP SF Holdings, LLC. The Council Chair
6 executes the Site Certificate amendment in the form of the "Third Amended Site Certificate for
7 Shepherds Flat North."

Issued this 26th day of February 2021

The OREGON ENERGY FACILITY SITING COUNCIL


By: [Marcia L. Grail \(Mar 3, 2021 19:31 PST\)](#)

Marcia L. Grail, Chair
Oregon Energy Facility Siting Council

8 **ATTACHMENTS**

9 Attachment A: Third Amended Site Certificate

10

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

**Third Amended Site Certificate
for
Shepherds Flat North**

ISSUANCE DATES

Site Certificate	July 25, 2008
First Amended Site Certificate	March 12, 2010
Second Amended Site Certificate	December 20, 2019
Third Amended Site Certificate	February 26, 2021

The Oregon Energy Facility Siting Council

THIRD AMENDED SITE CERTIFICATE FOR SHEPHERDS FLAT NORTH

I. INTRODUCTION

1 The Oregon Energy Facility Siting Council (Council) issues this amended site certificate
2 for Shepherds Flat North (the facility) in the manner authorized under ORS Chapter 469. This
3 amended site certificate is a binding agreement between the State of Oregon (State), acting
4 through the Council, and North Hurlburt Wind, LLC (certificate holder) authorizing the
5 certificate holder to construct and operate the facility in Gilliam County, Oregon.

6 The findings of fact, reasoning and conclusions of law underlying the terms and
7 conditions of this site certificate are set forth in the following documents, incorporated herein
8 by this reference: (a) the Council’s *Final Order on the Application for the Shepherds Flat Wind*
9 *Farm* issued on July 25, 2008, (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind*
10 *Farm*, (c) the *Final Order on Amendment #1 for Shepherds Flat North* (d) the *Final Order on*
11 *Amendment #2 for Shepherds Flat North*, and (e) the *Final Order on Amendment #3 for*
12 *Shepherds Flat North*.

13 In interpreting this amended site certificate, any ambiguity will be clarified by reference
14 to the following, in order of priority: (1) this *Third Amended Site Certificate* (2) the *Final Order*
15 *on Amendment #3 for Shepherds Flat North*, (3) the *Final Order on Amendment #2 for*
16 *Shepherds Flat North*, (4) the *Final Order on Amendment #1 for Shepherds Flat North*, (5) the
17 *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (6) the *Final Order on the*
18 *Application for the Shepherds Flat Wind Farm* and (7) the record of the proceedings that led to
19 the *Final Order on Amendment #3, #2 and #1 on Shepherds Flat North* and to the *Final Orders*
20 *on Amendment #1 and the Application for the Shepherds Flat Wind Farm*. [Amendment #1 (SFWF);
21 Amendment #1, #2, #3]

22 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this site
23 certificate, except where otherwise stated or where the context clearly indicates otherwise.

II. SITE CERTIFICATION

- 24 1. To the extent authorized by state law and subject to the conditions set forth herein, the
25 State authorizes the certificate holder to construct, operate and retire a wind energy
26 facility, together with certain related or supporting facilities, at the site in Gilliam County,
27 Oregon, as described in Section III of this site certificate. ORS 469.401(1). [Amendment #1
28 (SFWF)]
- 29 2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in
30 effect on the date that termination is sought or until the site certificate is revoked under
31 ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that
32 revocation is ordered. ORS 469.401(1).
- 33 3. This site certificate does not address, and is not binding with respect to, matters that were
34 not addressed in the Council’s Final Orders on the Application and Amendment #1 for the
35 Shepherds Flat Wind Farm and in the Final Orders on Amendment #1, #2 and #3, for

1 Shepherds Flat North. Such matters include, but are not limited to: building code
2 compliance, wage, hour and other labor regulations, local government fees and charges and
3 other design or operational issues that do not relate to siting the facility (ORS 469.401(4))
4 and permits issued under statutes and rules for which the decision on compliance has been
5 delegated by the federal government to a state agency other than the Council. 469.503(3).
6 [Amendment #1 (SFWF); Amendment #1, #2, #3]

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

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III. DESCRIPTION

1. The Facility

(a) The Energy Facility

1 The energy facility is an electric power generating facility that produces power from
2 wind energy. The facility consists of not more than 106 wind turbines. The energy facility is
3 described further in the Final Order on Amendment #1 for the Shepherds Flat Wind Farm and in
4 the Final Orders on Amendment #1, #2 and #3, for Shepherds Flat North. [Amendment #1 (SFWF);
5 Amendment #1, #2, #3]

Wind Turbine Repower

6
7 Wind turbine repowering includes removal and replacement of wind turbine blades and
8 associated wind turbine components on up to 106 existing turbine towers. Wind turbine
9 repowering requires trucks, small cranes or telehandlers, and a track mounted crane. Trucks
10 deliver new wind turbine components to wind turbine pad sites, and transport the old
11 components offsite for proper disposal or recycling at a licensed facility. Once the new wind
12 turbines components are delivered via truck to each pad site, smaller cranes or telehandlers
13 unload and stage the components. A track mounted crane then mobilizes to the turbine pad
14 area, setting up on the access road adjacent the turbine, and lowers the old rotor down to the
15 pad site for disassembly, followed by the old gearbox. Once disassembled, the old components
16 are staged for truck removal. The track mounted crane then lifts the new gearbox and rotor
17 into place. Once, complete, the track mounted crane advances to the next wind turbine, and
18 the process is repeated.

19

20 The facility repower activity results in approximately 109 acres of temporary disturbance from
21 temporary access roads, road improvements and laydown areas. [Amendment #2]

(b) Related or Supporting Facilities

22 The facility includes the following related or supporting facilities described below and in
23 greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the
24 *Final Order on Amendment #1*:

- 25 • Power Collection System
- 26 • Collector Substation
- 27 • Meteorological towers
- 28 • Field workshop
- 29 • Control system
- 30 • Access roads
- 31 • Additional construction areas

32 [Amendment #1 (SFWF); Amendment #1]

1 **Power Collection System**

2 A power collection system operating at 34.5 kilovolts (kV) transports power from each
3 turbine to a collector substation. The collection system is installed underground at a depth of at
4 least three feet. [Amendment #1]

5 **Collector Substations and Interconnection**

6 The facility includes a collector substation. The facility includes a 230-kV transmission
7 line between the substation and the interconnection site. The interconnection site is located at
8 the Bonneville Power Administration Slatt Switching Station. [Amendment #1 (SFWF)]

9 **Meteorological Towers**

10 The facility includes two permanent meteorological (met) towers. [Amendment #1 (SFWF)]

11 **Field Workshop**

12 The facility includes a field workshop. Including fenced areas, the field workshop
13 occupies about 1.6 acres. [Amendment #1 (SFWF)]

14 **Control System**

15 A fiber optic communications network links the control panels within each wind turbine
16 to a host computer located in the field workshop. Supervisory, Control and Data Acquisition
17 (SCADA) systems at the field workshop collect operating and performance data from the
18 turbines and the facility’s met towers. [Amendment #1 (SFWF)]

19 **Access Roads**

20 The facility includes up to 31 miles of new roads that provide access to the turbine
21 strings. The access roads connect to graveled turbine turnouts at the base of each turbine.
22 [Amendment #1 (SFWF)]

23 **Temporary Construction Areas**

24 During construction, the facility includes temporary laydown areas used to stage
25 construction and store supplies and equipment. The facility includes construction crane paths
26 to move construction cranes between turbine strings.

2. Location of the Facility

27 The facility is located in Gilliam County south of Interstate Highway 84 and east of
28 Arlington, Oregon, between State Highways 19 and 74. The facility is located entirely on private
29 land subject to long-term wind energy leases. [Amendment #1 (SFWF)]

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IV. CONDITIONS REQUIRED BY COUNCIL RULES

1 This section lists conditions required by OAR 345-025-0006 (Mandatory Conditions in
2 Site Certificates), OAR 345-025-0010 (Site Specific Conditions), OAR 345-025-0016 (Monitoring
3 and Mitigation Conditions) and OAR Chapter 345, Division 26 (Construction and Operation
4 Rules for Facilities). These conditions should be read together with the specific facility
5 conditions listed in Section V to ensure compliance with the siting standards of OAR Chapter
6 345, Divisions 22 and 24, and to protect the public health and safety. In these conditions, the
7 definitions in OAR 345-001-0010 apply.

8 The obligation of the certificate holder to report information to the Department or the
9 Council under the conditions listed in this section and in Section V is subject to the provisions of
10 ORS 192.502 *et seq.* and ORS 469.560. To the extent permitted by law, the Department and the
11 Council will not publicly disclose information that may be exempt from public disclosure if the
12 certificate holder has clearly labeled such information and stated the basis for the exemption at
13 the time of submitting the information to the Department or the Council. If the Council or the
14 Department receives a request for the disclosure of the information, the Council or the
15 Department, as appropriate, will make a reasonable attempt to notify the certificate holder and
16 will refer the matter to the Attorney General for a determination of whether the exemption is
17 applicable, pursuant to ORS 192.450.

18 In addition to these conditions, the site certificate holder is subject to all conditions and
19 requirements contained in the rules of the Council and in local ordinances and state law in
20 effect on the date the certificate is executed. Under ORS 469.401(2), upon a clear showing of a
21 significant threat to the public health, safety or the environment that requires application of
22 later-adopted laws or rules, the Council may require compliance with such later-adopted laws
23 or rules.

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

28 1 The Council shall not change the conditions of the site certificate except as provided for in
29 OAR Chapter 345, Division 27.

30 2 The certificate holder shall submit a legal description of the site to the Department of
31 Energy within 90 days after beginning operation of the facility. The legal description
32 required by this rule means a description of metes and bounds or a description of the site
33 by reference to a map and geographic data that clearly and specifically identifies the outer
34 boundaries that contain all parts of the facility.

35 3 The certificate holder shall design, construct, operate and retire the facility:
36 (a) Substantially as described in the site certificate;
37 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,
38 and applicable state and local laws, rules and ordinances in effect at the time the site
39 certificate is issued; and
40 (c) In compliance with all applicable permit requirements of other state agencies.

- 1 4 The certificate holder shall begin and complete construction of the facility by the dates
2 specified in the site certificate. *(See Conditions 24 and 25.)*
- 3 5 Except as necessary for the initial survey or as otherwise allowed for wind energy facilities
4 or transmission lines under this section, the certificate holder shall not begin construction,
5 as defined in OAR 345-001-0010, or create a clearing on any part of the site until the
6 certificate holder has construction rights on all parts of the site. For the purpose of this
7 rule, “construction rights” means the legal right to engage in construction activities. For
8 wind energy facilities and transmission lines, if the certificate holder does not have
9 construction rights on all parts of the site, the certificate holder may nevertheless begin
10 construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if
11 the certificate holder has construction rights on that part of the site and:
12 (a) The certificate holder would construct and operate part of the facility on that part of
13 the site even if a change in the planned route of the transmission line occurs during the
14 certificate holder’s negotiations to acquire construction rights on another part of the site;
15 or
16 (b) The certificate holder would construct and operate part of a wind energy facility on
17 that part of the site even if other parts of the facility were modified by amendment of the
18 site certificate or were not built.
- 19 6 If the Council requires mitigation based on an affirmative finding under any standards of
20 Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected
21 state agencies and local governments designated by the Council and shall develop specific
22 mitigation plans consistent with Council findings under the relevant standards. The
23 certificate holder must submit the mitigation plans to the Office and receive Office
24 approval before beginning construction or, as appropriate, operation of the facility.
- 25 7 The certificate holder shall prevent the development of any conditions on the site that
26 would preclude restoration of the site to a useful, non-hazardous condition to the extent
27 that prevention of such site conditions is within the control of the certificate holder.
- 28 8 Before beginning construction of the facility, the certificate holder shall submit to the
29 State of Oregon, through the Council, a bond or letter of credit, in a form and amount
30 satisfactory to the Council to restore the site to a useful, non-hazardous condition. The
31 certificate holder shall maintain a bond or letter of credit in effect at all times until the
32 facility has been retired. The Council may specify different amounts for the bond or letter
33 of credit during construction and during operation of the facility. *(See Condition 30.)*
- 34 9 The certificate holder shall retire the facility if the certificate holder permanently ceases
35 construction or operation of the facility. The certificate holder shall retire the facility
36 according to a final retirement plan approved by the Council, as described in OAR 345-027-
37 0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-
38 hazardous condition at the time of retirement, notwithstanding the Council’s approval in
39 the site certificate of an estimated amount required to restore the site.

- 1 10 The Council shall include as conditions in the site certificate all representations in the site
2 certificate application and supporting record the Council deems to be binding
3 commitments made by the applicant.
- 4 11 Upon completion of construction, the certificate holder shall restore vegetation to the
5 extent practicable and shall landscape all areas disturbed by construction in a manner
6 compatible with the surroundings and proposed use. Upon completion of construction,
7 the certificate holder shall remove all temporary structures not required for facility
8 operation and dispose of all timber, brush, refuse and flammable or combustible material
9 resulting from clearing of land and construction of the facility.
- 10 12 The certificate holder shall design, engineer and construct the facility to avoid dangers to
11 human safety and the environment presented by seismic hazards affecting the site that
12 are expected to result from all maximum probable seismic events. As used in this rule
13 “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction triggering
14 and consequences (including flow failure, settlement buoyancy, and lateral spreading),
15 cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure
16 interaction.
- 17 13 The certificate holder shall notify the Department, the State Building Codes Division and
18 the Department of Geology and Mineral Industries promptly if site investigations or
19 trenching reveal that conditions in the foundation rocks differ significantly from those
20 described in the application for a site certificate. After the Department receives the notice,
21 the Council may require the certificate holder to consult with the Department of Geology
22 and Mineral Industries and the Building Codes Division to propose and implement
23 corrective or mitigation actions.
- 24 14 The certificate holder shall notify the Department, the State Building Codes Division and
25 the Department of Geology and Mineral Industries promptly if shear zones, artesian
26 aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the
27 Department receives notice, the Council may require the certificate holder to consult with
28 the Department of Geology and Mineral Industries and the Building Codes Division to
29 propose and implement corrective or mitigation actions.
- 30 15 Before any transfer of ownership of the facility or ownership of the site certificate holder,
31 the certificate holder shall inform the Department of the proposed new owners. The
32 requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a
33 transfer of the site certificate.
- 34 16 If the Council finds that the certificate holder has permanently ceased construction or
35 operation of the facility without retiring the facility according to a final retirement plan
36 approved by the Council, as described in OAR 345-027-0110, the Council shall notify the
37 certificate holder and request that the certificate holder submit a proposed final
38 retirement plan to the Office within a reasonable time not to exceed 90 days. If the
39 certificate holder does not submit a proposed final retirement plan by the specified date,
40 the Council may direct the Department to prepare a proposed final retirement plan for the
41 Council’s approval. Upon the Council’s approval of the final retirement plan, the Council

1 may draw on the bond or letter of credit described in OAR 345-027-0020(8) to restore the
2 site to a useful, non-hazardous condition according to the final retirement plan, in addition
3 to any penalties the Council may impose under OAR Chapter 345, Division 29. If the
4 amount of the bond or letter of credit is insufficient to pay the actual cost of retirement,
5 the certificate holder shall pay any additional cost necessary to restore the site to a useful,
6 non-hazardous condition. After completion of site restoration, the Council shall issue an
7 order to terminate the site certificate if the Council finds that the facility has been retired
8 according to the approved final retirement plan.

9 17 If the facility includes any transmission line under Council jurisdiction:

10 (a) The certificate holder shall design, construct and operate the transmission line in
11 accordance with the requirements of the National Electrical Safety Code (American
12 National Standards Institute, Section C2, 1997 Edition); and

13 (b) The certificate holder shall develop and implement a program that provides
14 reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or
15 structures of a permanent nature that could become inadvertently charged with electricity
16 are grounded or bonded throughout the life of the line.

17 18 If the proposed energy facility has, as a related or supporting facility, a transmission line,
18 the Council shall specify an approved corridor in the site certificate and shall allow the
19 certificate holder to construct the transmission line anywhere within the corridor, subject
20 to the conditions of the site certificate. If the applicant has analyzed more than one
21 corridor in its application for a site certificate, the Council may, subject to the Council's
22 standards, approve more than one corridor.

23 19 The following general monitoring conditions apply:

24 (a) The certificate holder shall consult with affected state agencies, local governments
25 and tribes and shall develop specific monitoring programs for impacts to resources
26 protected by the standards of divisions 22 and 24 of OAR Chapter 345 and resources
27 addressed by applicable statutes, administrative rules and local ordinances. The certificate
28 holder must submit the monitoring programs to the Department of Energy and receive
29 Department approval before beginning construction or, as appropriate, operation of the
30 facility.

31 (b) The certificate holder shall implement (b) the approved monitoring programs described
32 in OAR 345-027-0028(1) and monitoring programs required by permitting agencies and
33 local governments.

34 (c) For each monitoring program described in OAR 345-027-0028(1) and (2), the
35 certificate holder shall have quality assurance measures approved by the Department
36 before beginning construction or, as appropriate, before beginning commercial operation.

37 (d) If the certificate holder becomes aware of a significant environmental change or
38 impact attributable to the facility, the certificate holder shall, as soon as possible, submit a
39 written report to the Department describing the impact on the facility and any affected
40 site certificate conditions.
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1 20 Following receipt of the site certificate or an amended site certificate, the certificate
2 holder shall implement a plan that verifies compliance with all site certificate terms and
3 conditions and applicable statutes and rules. As a part of the compliance plan, to verify
4 compliance with the requirement to begin construction by the date specified in the site
5 certificate, the certificate holder shall report promptly to the Department of Energy when
6 construction begins. Construction is defined in OAR 345-001-0010. In reporting the
7 beginning of construction, the certificate holder shall describe all work on the site
8 performed before beginning construction, including work performed before the Council
9 issued the site certificate, and shall state the cost of that work. For the purpose of this
10 exhibit, “work on the site” means any work within a site or corridor, other than surveying,
11 exploration or other activities to define or characterize the site or corridor. The certificate
12 holder shall document the compliance plan and maintain it for inspection by the
13 Department or the Council.

14 21 The certificate holder shall report according to the following requirements:

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

16 (i) Within six months after beginning construction, and every six months thereafter
17 during construction of the energy facility and related or supporting facilities, the
18 certificate holder shall submit a semiannual construction progress report to the
19 Department of Energy. In each construction progress report, the certificate holder shall
20 describe any significant changes to major milestones for construction. The certificate
21 holder shall include such information related to construction as specified in the site
22 certificate. When the reporting date coincides, the certificate holder may include the
23 construction progress report within the annual report described in OAR 345-026-0080.

24 (ii) By April 30 of each year after beginning construction, the certificate holder shall
25 submit an annual report to the Department addressing the subjects listed in OAR 345-026-
26 0080. The Council Secretary and the certificate holder may, by mutual agreement, change
27 the reporting date.

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

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

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

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

1 (iii) Status of Surety Information: Documentation demonstrating that bonds or
2 letters of credit as described in the site certificate are in full force and effect and will
3 remain in full force and effect for the term of the next reporting period.

4 (iv) Monitoring Report: A list and description of all significant monitoring and
5 mitigation activities performed during the previous year in accordance with site certificate
6 terms and conditions, a summary of the results of those activities and a discussion of any
7 significant changes to any monitoring or mitigation program, including the reason for any
8 such changes.

9 (v) Compliance Report: A description of all instances of noncompliance with a site
10 certificate condition. For ease of review, the certificate holder shall, in this section of the
11 report, use numbered subparagraphs corresponding to the applicable sections of the site
12 certificate.

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

16 22 The certificate holder and the Department of Energy shall exchange copies of all
17 correspondence or summaries of correspondence related to compliance with statutes,
18 rules and local ordinances on which the Council determined compliance, except for
19 material withheld from public disclosure under state or federal law or under Council rules.
20 The certificate holder may submit abstracts of reports in place of full reports; however,
21 the certificate holder shall provide full copies of abstracted reports and any summarized
22 correspondence at the request of the Department.

23 23 The certificate holder shall notify the Department of Energy within 72 hours of any
24 occurrence involving the facility if:

25 (a) There is an attempt by anyone to interfere with its safe operation;

26 (b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-
27 caused event such as a fire or explosion affects or threatens to affect the public health and
28 safety or the environment; or

29 (c) There is any fatal injury at the facility.

V. SPECIFIC FACILITY CONDITIONS

30 The conditions listed in this section include conditions based on representations in the
31 site certificate application and supporting record. These conditions are required under OAR
32 345-027-0020(10). The certificate holder must comply with these conditions in addition to the
33 conditions listed in Section VI. This section includes other specific facility conditions the Council
34 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
35 22 and 24, and to protect the public health and safety. For conditions that require subsequent
36 review and approval of a future action, ORS 469.402 authorizes the Council to delegate the
37 future review and approval to the Department if, in the Council's discretion, the delegation is
38 warranted under the circumstances of the case.

1. Certificate Administration Conditions

- 1 24 The certificate holder shall begin construction of the facility by July 25, 2011. The Council
2 may grant an extension of the deadline to begin construction in accordance with OAR 345-
3 027-0030 or any successor rule in effect at the time the request for extension is
4 submitted. [Amendment #1 (SFWF)]
- 5 25 The certificate holder shall complete construction of the facility by July 25, 2014.
6 Construction is complete when: 1) the facility is substantially complete as defined by the
7 certificate holder’s construction contract documents, 2) acceptance testing has been
8 satisfactorily completed and 3) the energy facility is ready to begin continuous operation
9 consistent with the site certificate. The certificate holder shall promptly notify the
10 Department of the date of completion of construction. The Council may grant an
11 extension of the deadline for completing construction in accordance with OAR 345-027-
12 0030 or any successor rule in effect at the time the request for extension is submitted.
13 [Amendment #1 (SFWF)]
- 14 26 The certificate holder shall construct a facility substantially as described in the site
15 certificate and may select turbines of any type, subject to the following restrictions and
16 compliance with all other site certificate conditions. Before beginning construction, the
17 certificate holder shall provide to the Department a description of the turbine types
18 selected for the facility demonstrating compliance with this condition.
- 19 (a) The total number of turbines at the facility must not exceed 106 turbines.
20 (b) The turbine hub height must not exceed 105 meters and the maximum blade tip
21 height must not exceed 150 meters.
- 22 (c) The minimum blade tip clearance must be 25 meters above ground. Repowered
23 turbines that comply with the setback requirements of Condition 110, must have a
24 minimum blade tip clearance of 21.5 meters above ground.
- 25 (d) The maximum volume of concrete above three feet below grade in the turbine
26 foundations must not exceed 66 cubic yards.
- 27 (e) The maximum combined weight of metals in the tower (including ladders and
28 platforms) and nacelle must not exceed 393 U.S. tons per turbine.
- 29 (f) The certificate holder shall request an amendment of the site certificate to increase
30 the number of wind turbines to more than 106 wind turbines or to install wind turbines
31 with a hub height greater than 105 meters, a blade tip height greater than 150 meters or a
32 blade tip clearance less than 21.5 meters above ground.
- 33 [Amendment #1 (SFWF); Amendment #2]
- 34 27 The certificate holder shall obtain all necessary federal, state and local permits or
35 approvals required for construction, operation and retirement of the facility or ensure that
36 its contractors obtain the necessary federal, state and local permits or approvals.
- 37 28 Before beginning construction, the certificate holder shall notify the Department in
38 advance of any work on the site that does not meet the definition of “construction” in ORS
39 469.300, excluding surveying, exploration or other activities to define or characterize the
40 site, and shall provide to the Department a description of the work and evidence that its
41 value is less than \$250,000.

1 29 Before beginning construction and after considering all micrositing factors, the certificate
2 holder shall provide to the Department, to the Oregon Department of Fish and Wildlife
3 (ODFW) and to the Planning Director of Gilliam County detailed maps of the facility site,
4 showing the final locations where the certificate holder proposes to build facility
5 components, and a table showing the acres of temporary and permanent habitat impact
6 by habitat category and subtype, similar to Table 7 in the Final Order on Amendment #1
7 for the Shepherds Flat Wind Farm. The detailed maps of the facility site shall indicate the
8 habitat categories of all areas that would be affected during construction (similar to the
9 maps labeled “ODFW-2” in the site certificate application for the Shepherds Flat Wind
10 Farm). In classifying the affected habitat into habitat categories, the certificate holder shall
11 consult with the ODFW. The certificate holder shall not begin ground disturbance in an
12 affected area until the habitat assessment has been approved by the Department. The
13 Department may employ a qualified contractor to confirm the habitat assessment by on-
14 site inspection. [Amendment #1 (SFWF)]

15 30 Before beginning construction, the certificate holder shall submit to the State of Oregon
16 through the Council a bond or letter of credit in the amount described herein naming the
17 State of Oregon, acting by and through the Council, as beneficiary or payee. The initial
18 bond or letter of credit amount is either \$7.443 million (1st Quarter 2010 dollars), to be
19 adjusted to the date of issuance as described in (b), or the amount determined as
20 described in (a). The certificate holder shall adjust the amount of the bond or letter of
21 credit on an annual basis thereafter as described in (b).

22 (a) The certificate holder may adjust the amount of the bond or letter of credit based
23 on the final design configuration of the facility and turbine types selected by
24 applying the unit costs and general costs illustrated in Table 1 in the Final Order on
25 Amendment #1 for the Shepherds Flat Wind Farm and calculating the financial
26 assurance amount as described in that order, adjusted to the date of issuance as
27 described in (b) and subject to approval by the Department.

28 (b) The certificate holder shall adjust the amount of the bond or letter of credit, using
29 the following calculation and subject to approval by the Department:

30 (i) Adjust the Subtotal component of the bond or letter of credit amount (expressed
31 in 3rd Quarter 2009 dollars) to present value, using the U.S. Gross Domestic
32 Product Implicit Price Deflator, Chain-Weight, as published in the Oregon
33 Department of Administrative Services’ “Oregon Economic and Revenue
34 Forecast” or by any successor agency (the “Index”) and using the index value for
35 3rd Quarter 2009 dollars and the quarterly index value for the date of issuance of
36 the new bond or letter of credit. If at any time the Index is no longer published,
37 the Council shall select a comparable calculation to adjust 3rd Quarter 2009
38 dollars to present value.

39 (ii) Add 1 percent of the adjusted Subtotal (i) for the adjusted performance bond
40 amount to determine the adjusted Gross Cost.

41 (iii) Add 10 percent of the adjusted Gross Cost (ii) for the adjusted administration
42 and project management costs and 10 percent of the adjusted Gross Cost (ii) for
43 the adjusted future developments contingency.

- 1 (iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) and round the
2 resulting total to the nearest \$1,000 to determine the adjusted financial
3 assurance amount.
- 4 (c) The certificate holder shall use a form of bond or letter of credit approved by the
5 Council.
- 6 (d) The certificate holder shall use an issuer of the bond or letter of credit approved by
7 the Council.
- 8 (e) The certificate holder shall describe the status of the bond or letter of credit in the
9 annual report submitted to the Council under Condition 21.
- 10 (f) The bond or letter of credit shall not be subject to revocation or reduction before
11 retirement of the facility site.

12 [Amendment #1 (SFWF); Amendment #1]

- 13 **31** If the certificate holder elects to use a bond to meet the requirements of Condition 30, the
14 certificate holder shall ensure that the surety is obligated to comply with the requirements
15 of applicable statutes, Council rules and this site certificate when the surety exercises any
16 legal or contractual right it may have to assume construction, operation or retirement of
17 the energy facility. The certificate holder shall also ensure that the surety is obligated to
18 notify the Council that it is exercising such rights and to obtain any Council approvals
19 required by applicable statutes, Council rules and this site certificate before the surety
20 commences any activity to complete construction, operate or retire the energy facility.
- 21 **32** Before beginning construction, the certificate holder shall notify the Department of the
22 identity and qualifications of the major design, engineering and construction contractor(s)
23 for the facility. The certificate holder shall select contractors that have substantial
24 experience in the design, engineering and construction of similar facilities. The certificate
25 holder shall report to the Department any change of major contractors.
- 26 **33** The certificate holder shall contractually require all construction contractors and
27 subcontractors involved in the construction of the facility to comply with all applicable
28 laws and regulations and with the terms and conditions of the site certificate. Such
29 contractual provisions shall not operate to relieve the certificate holder of responsibility
30 under the site certificate.
- 31 **34** During construction, the certificate holder shall have a full-time, on-site assistant
32 construction manager who is qualified in environmental compliance to ensure compliance
33 with all site certificate conditions. The certificate holder shall notify the Department of the
34 name, telephone number and e-mail address of this person.
- 35 **35** Within 72 hours after discovery of conditions or circumstances that may violate the terms
36 or conditions of the site certificate, the certificate holder shall report the conditions or
37 circumstances to the Department.

2. Land Use Conditions

1 36 The certificate holder shall consult with area landowners and lessees during construction
2 and operation of the facility and shall implement measures to reduce or avoid any adverse
3 impacts to farm practices on surrounding lands and to avoid any increase in farming costs.

4 37 The certificate holder shall design and construct the facility using the minimum land area
5 necessary for safe construction and operation. The certificate holder shall locate access
6 roads and temporary construction laydown and staging areas to minimize disturbance
7 with farming practices and, wherever feasible, shall place turbines and transmission
8 interconnection lines along the margins of cultivated areas to reduce the potential for
9 conflict with farm operations.

10 38 During construction and operation of the facility, the certificate holder shall implement a
11 plan to control the introduction and spread of noxious weeds. The certificate shall develop
12 the weed control plan consistent with the Gilliam County Weed Control Program.

13 [Amendment #1 (SFWF)]

14 39 Before beginning construction of the facility, the certificate holder shall record in the real
15 property records of Gilliam County a Covenant Not to Sue with regard to generally
16 accepted farming practices on adjacent farmland consistent with Gilliam County Zoning
17 Ordinance 7.020(T)(4)(a)(5).

18 40 The certificate holder shall construct all facility components in compliance with the
19 following setback requirements:

20 (a) All facility components must be at least 3,520 feet from the property line of
21 properties zoned residential use or designated in the Gilliam County Comprehensive
22 Plan as residential.

23 (b) Where (a) does not apply, the certificate holder shall maintain a minimum distance
24 of 110-percent of maximum blade tip height, measured from the centerline of the
25 turbine tower to the nearest edge of any public road right-of-way. The certificate
26 holder shall assume a minimum right-of-way width of 60 feet.

27 (c) Where (a) does not apply, the certificate holder shall maintain a minimum distance
28 of 1,320 feet, measured from the centerline of the turbine tower to the center of
29 the nearest residence existing at the time of tower construction.

30 (d) Where (a) does not apply, the certificate holder shall maintain a minimum distance
31 of 110-percent of maximum blade tip height, measured from the centerline of the
32 turbine tower to the nearest boundary of the certificate holder's lease area, except
33 as provided in (e).

34 (e) The turbine tower setback distance described in (d) does not apply to one isolated
35 area excluded from the certificate holder's lease with the landowner identified as
36 "Area A" in the *Final Order on Amendment #1*.

37 [Amendment #1]

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- 1 41 Within 90 days after beginning operation, the certificate holder shall provide to the
2 Department and to the Planning Director of Gilliam County the actual latitude and
3 longitude location or Stateplane NAD 83(91) coordinates of each turbine tower,
4 connecting lines and transmission lines. In addition, the certificate holder shall provide to
5 the Department and to the Planning Director of Gilliam County, a summary of as-built
6 changes in the facility compared to the original plan, if any. [Amendment #1 (SFWF)]
- 7 42 The certificate holder shall install gates on all private facility access roads in Gilliam
8 County, in accordance with Gilliam County Zoning Ordinance Section 7.020(T)(4)(d)(6).

3. Cultural Resource Conditions

- 9 43 Before beginning construction, the certificate holder shall provide to the Department a
10 map showing the final design locations of all components of the facility and areas that
11 would be temporarily disturbed during construction. In addition, the certificate holder
12 shall comply with the following requirements:
- 13 (a) The certificate holder shall avoid disturbance within a 30-meter buffer around the
14 historic-period archaeological sites within the facility boundary identified by AINW
15 as “possibly eligible” for listing in the National Register of Historic Places (NRHP) as
16 described in the Final Order on the Application for the Shepherds Flat Wind Farm.
- 17 (b) The certificate holder shall avoid disturbance of the stacked rock features within the
18 facility boundary identified by AINW as “possibly eligible” for listing in the NRHP as
19 described in the Final Order on the Application for the Shepherds Flat Wind Farm
20 and shall, to the extent practicable, maintain a 30-meter no-construction buffer
21 around these features. If a 30-meter buffer cannot be maintained, the certificate
22 holder shall consult with the State Historic Preservation Office (SHPO) and the
23 Department to determine appropriate action to preserve or document the feature.
- 24 (c) The certificate holder shall label “no entry” areas around all identified historic,
25 cultural or archaeological resource sites on construction maps and drawings, and if
26 construction activities will occur within 200 feet of an identified site, the certificate
27 holder shall flag a 30-meter buffer around the site.
- 28 (d) The certificate holder shall hire qualified personnel to conduct pre-construction field
29 investigation for historic, cultural or archaeological resources in any areas of
30 potential construction disturbance that AINW did not previously survey.
- 31 (e) The certificate holder shall provide written reports of the field investigation required
32 under (d) to the Department and to the SHPO. If any historic, cultural or
33 archaeological resources are found that the SHPO determines to be significant, the
34 certificate holder shall consult with the Department and the SHPO to develop plan
35 to avoid disturbance of the resources during construction and operation of the
36 facility. The certificate holder shall instruct all construction personnel to avoid areas
37 where the resources were found and shall implement other appropriate measures
38 to protect the resources.

39 [Amendment #1 (SFWF)]

1 44 The certificate holder shall ensure that a qualified archeologist, as defined in OAR 736-
2 051-0070, instructs construction personnel in the identification of cultural materials and
3 avoidance of accidental damage to identified resource sites.

4 45 The certificate holder shall ensure that construction personnel cease all ground-disturbing
5 activities in the immediate area if any archaeological or cultural resources are found
6 during construction of the facility until a qualified archeologist can evaluate the
7 significance of the find. The certificate holder shall notify the Department and the State
8 Historic Preservation Office (SHPO) of the find. If the SHPO determines that the resource is
9 significant, the certificate holder shall make recommendations to the Council for
10 mitigation, including avoidance, field documentation and data recovery, in consultation
11 with the Department, SHPO, interested tribes and other appropriate parties. The
12 certificate holder shall not restart work in the affected area until the certificate holder has
13 demonstrated to the Department and the SHPO that it has complied with archaeological
14 resource protection regulations.

15 46 [Condition removed by Amendment #1 (SFWF)]

4. Geotechnical Conditions

16 47 Before beginning construction, the certificate holder shall conduct a site-specific
17 geotechnical investigation and shall report its findings to the Oregon Department of
18 Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall
19 conduct the geotechnical investigation after consultation with DOGAMI and in general
20 accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic
21 Reports and Site-Specific Seismic Hazard Reports."

22 48 The certificate holder shall design and construct the facility in accordance with
23 requirements set forth by the State of Oregon's Building Code Division and any other
24 applicable codes and design procedures. The certificate holder shall design facility
25 structures to meet or exceed the minimum standards required by the 2003 International
26 Building Code.

27 49 The certificate holder shall design, engineer and construct the facility to avoid dangers to
28 human safety presented by non-seismic hazards. As used in this condition, "non-seismic
29 hazards" include settlement, landslides, flooding and erosion.

5. Hazardous Materials, Fire Protection & Public Safety Conditions

30 50 The certificate holder shall handle hazardous materials used on the site in a manner that
31 protects public health, safety and the environment and shall comply with all applicable
32 local, state and federal environmental laws and regulations. The certificate holder shall
33 not store diesel fuel or gasoline on the facility site.

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- 1 51 If a spill or release of hazardous material occurs during construction or operation of the
2 facility, the certificate holder shall notify the Department within 72 hours and shall clean
3 up the spill or release and dispose of any contaminated soil or other materials according to
4 applicable regulations. The certificate holder shall make sure that spill kits containing
5 items such as absorbent pads are located on equipment and at the field workshop. The
6 certificate holder shall instruct employees about proper handling, storage and cleanup of
7 hazardous materials. [Amendment #1 (SFWF)]
- 8 52 During construction, the certificate holder shall ensure that construction personnel are
9 trained in fire prevention and response, that construction vehicles and equipment are
10 operated on graveled areas to the extent possible and that open flames, such as cutting
11 torches, are kept away from dry grass areas.
- 12 53 During operation, the certificate holder shall ensure that all on-site employees receive
13 annual fire prevention and response training, including tower rescue training, by qualified
14 instructors or members of the local fire district. The certificate holder shall ensure that all
15 employees are instructed to keep vehicles on roads and off dry grassland, except when
16 off-road operation is required for emergency purposes. The certificate holder shall
17 encourage employees to become volunteer members of local fire departments and shall
18 facilitate appropriate training. [Amendment #1 (SFWF)]
- 19 54 During construction and operation of the facility, the certificate holder shall ensure that
20 the field workshop and all service vehicles are equipped with shovels and portable fire
21 extinguishers of a 4A50BC or equivalent rating. [Amendment #1 (SFWF)]
- 22 55 During construction and operation of the facility, the certificate holder shall develop and
23 implement fire safety plans in consultation with the North Gilliam County Rural Fire
24 Protection District to minimize the risk of fire and to respond appropriately to any fires
25 that occur on the facility site. In developing the fire safety plans, the certificate holder
26 shall take into account the dry nature of the region and shall address risks on a seasonal
27 basis. The certificate holder shall meet annually with local fire protection agency
28 personnel to discuss emergency planning and shall invite local fire protection agency
29 personnel to observe any emergency drill or tower rescue training conducted at the
30 facility. [Amendment #1 (SFWF)]
- 31 56 Upon the beginning of operation of the facility, the certificate holder shall provide a site
32 plan to the North Gilliam County Rural Fire Protection District. The certificate holder shall
33 indicate on the site plan the identification number assigned to each turbine and the
34 location of all facility structures and shall provide an updated site plan if additional
35 turbines or other structures are later added to the facility. During operation, the certificate
36 holder shall ensure that appropriate fire protection agency personnel have an up-to-date
37 list of the names and telephone numbers of facility personnel available to respond on a
38 24-hour basis in case of an emergency on the facility site. [Amendment #1 (SFWF)]

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- 1 57 Before beginning construction, the certificate holder shall submit a Notice of Proposed
2 Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon
3 Department of Aviation identifying the proposed final locations of turbine towers and
4 meteorological towers. The certificate holder shall promptly notify the Department of the
5 responses from the FAA and the Oregon Department of Aviation. [Amendment #1 (SFWF)]
- 6 58 The certificate holder shall construct turbines on concrete foundations and shall surround
7 the base of each tower with a ten-foot pad area of washed crushed rock on all sides. The
8 certificate holder shall cover turbine pad areas with non-erosive, non-flammable material
9 as soon as possible following exposure during construction and shall maintain the pad area
10 covering during operation of the facility.
- 11 59 The certificate holder shall follow manufacturers' recommended handling instructions and
12 procedures to prevent damage to turbine or turbine tower components that could lead to
13 failure.
- 14 60 The certificate holder shall install and maintain self-monitoring devices on each turbine,
15 connected to a fault annunciation panel or supervisory control and data acquisition
16 (SCADA) system at the field workshop to alert operators to potentially dangerous
17 conditions. The certificate holder shall maintain automatic equipment protection features
18 in each turbine that would shut down the turbine and reduce the chance of a mechanical
19 problem causing a fire. [Amendment #1 (SFWF)]
- 20 61 The certificate holder shall construct turbine towers with no exterior ladders or access to
21 the turbine blades and shall install locked tower access doors. The certificate holder shall
22 keep tower access doors locked at all times except when authorized personnel are
23 present.
- 24 62 The certificate holder shall have an operational safety-monitoring program and shall
25 inspect all turbine and turbine tower components on a regular basis. All turbine and
26 turbine tower components will be inspected within 6 months of being repowered.
27 Following the inspection, the certificate holder shall submit a written report to the
28 Department describing the results of the turbine tower component inspection. The
29 certificate holder shall maintain or repair turbine and turbine tower components as
30 necessary to protect public safety. [Amendment #2]
- 31 63 For turbine types having pad-mounted step-up transformers, the certificate holder shall
32 install the transformers at the base of each tower in locked cabinets designed to protect
33 the public from electrical hazards and to avoid creation of artificial habitat for raptor prey.
- 34 64 To protect the public from electrical hazards, the certificate holder shall enclose the
35 facility substation with appropriate fencing and locked gates. [Amendment #1 (SFWF)]
- 36 65 The certificate holder shall construct access roads with a finished width of approximately
37 16 feet, a compacted base of native soil and a gravel surface to a depth of four to ten
38 inches. [Amendment #1 (SFWF); Amendment #1]
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- 1 66 During construction, the certificate holder shall implement measures to reduce traffic
2 impacts, including:
- 3 (a) Providing notice to the City of Arlington Road Department, the Gilliam County Road
4 Department and the Gilliam County Sheriff's Office in advance of deliveries that
5 could cause traffic disruption in Arlington.
- 6 (b) Providing notice to the residents of Arlington in advance of deliveries that could
7 cause traffic disruption.
- 8 (c) Requiring flaggers to be at appropriate locations at appropriate times during
9 construction to direct traffic.
- 10 67 The certificate holder shall cooperate with the Gilliam County Road Department to ensure
11 that any unusual damage or wear to county roads that is caused by construction of the
12 facility is repaired by the certificate holder. Submittal to the Department of an executed
13 Road Use Agreement with Gilliam County shall constitute evidence of compliance with this
14 condition. Upon completion of construction, the certificate holder shall restore county
15 roads to pre-construction condition or better, to the satisfaction of the county Road
16 Department. If required by Gilliam County, the certificate holder shall post bonds to
17 ensure funds are available to repair and maintain roads affected by the proposed facility.
18 The certificate holder shall also coordinate with the Morrow County Road Department
19 regarding implementation of a similar Road Use agreement. The certificate holder must
20 submit evidence of compliance prior to construction of facility repowering as authorized
21 by site certificate Amendment #2. [Amendment #1 (SFWF); Amendment #2]
- 22 68 During construction, the certificate holder shall require that all on-site construction
23 contractors develop and implement a site health and safety plan that informs workers and
24 others on-site what to do in case of an emergency and that includes the locations of fire
25 extinguishers and nearby hospitals, important telephone numbers and first aid techniques.
26 The certificate holder shall ensure that construction contractors have personnel on-site
27 who are trained and equipped for tower rescue and who are first aid and CPR certified.
- 28 69 During operation, the certificate holder shall develop and implement a site health and
29 safety plan that informs employees and others on-site what to do in case of an emergency
30 and that includes the locations of fire extinguishers and nearby hospitals, important
31 telephone numbers and first aid techniques.
- 32 70 During construction and operation of the facility, the certificate holder shall provide for
33 on-site security and shall establish good communications between on-site security
34 personnel and the Gilliam County Sheriff's Office. During operation, the certificate holder
35 shall ensure that appropriate law enforcement agency personnel have an up-to-date list of
36 the names and telephone numbers of facility personnel available to respond on a 24-hour
37 basis in case of an emergency on the facility site. [Amendment #1 (SFWF)]
- 38 71 The certificate holder shall notify the Department and the Gilliam County Planning
39 Director within 72 hours of any accidents including mechanical failures on the site
40 associated with construction or operation of the facility that may result in public health
41 and safety concerns. [Amendment #1 (SFWF)]

6. Water, Soils, Streams & Wetlands Conditions

1 72 [Condition removed by Amendment #1 (SFWF)]

2 73 The certificate holder shall conduct all construction work, including the repowering
3 activities associated with RFA2, in compliance with an Erosion and Sediment Control Plan
4 (ESCP) satisfactory to the Oregon Department of Environmental Quality and as required
5 under the National Pollutant Discharge Elimination System (NPDES) Storm Water
6 Discharge General Permit #1200-C. The certificate holder shall include in the ESCP any
7 procedures necessary to meet local erosion and sediment control requirements or storm
8 water management requirements. [Amendment #2]

9 74 During construction, the certificate holder shall limit truck traffic to designated existing
10 and improved road surfaces to avoid soil compaction, to the extent practicable.

11 75 During construction, the certificate holder shall implement best management practices to
12 control any dust generated by construction activities, such as applying water to roads and
13 disturbed soil areas. [Amendment #2]

14 76 During construction, the certificate holder shall reduce temporary disturbance impacts by
15 making use of previously disturbed areas, including roadways and tracks, and by
16 preserving vegetation rootstalks by crushing, rather than scraping, vegetation in areas of
17 temporary disturbance. [Amendment #2]

18 77 During facility operation, the certificate holder shall routinely inspect and maintain all
19 roads, pads and trenched areas and, as necessary, maintain or repair erosion and
20 sediment control measures. The certificate holder shall restore areas that are temporarily
21 disturbed during facility maintenance or repair activities to pre-disturbance condition or
22 better. [Amendment #2]

23 78 During facility operation, the certificate holder shall obtain water for on-site uses from a
24 well at the field workshop, subject to compliance with applicable permit requirements.
25 The certificate holder shall not use more than 5,000 gallons of water per day from the
26 facility's on-site well. [Amendment #1 (SFWF)]

7. Transmission Line & EMF Conditions

27 79 The certificate holder shall install the 34.5-kV collector system underground. The
28 certificate holder shall install underground lines at a minimum depth of three feet.
29 [Amendment #1 (SFWF); Amendment #1]

30 80 The certificate holder shall ground appropriate sections of fencing that parallel
31 transmission lines to reduce the risk of shock from induced voltage. [Amendment #1 (SFWF)]

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1 **81** The certificate holder shall take reasonable steps to reduce or manage human exposure to
2 electromagnetic fields, including but not limited to:

- 3 (a) Constructing all aboveground transmission lines at least 200 feet from any residence
4 or other occupied structure, measured from the centerline of the transmission line.
- 5 (b) [Text removed by Amendment #1]
- 6 (c) Constructing all aboveground 230-kV transmission lines with a minimum clearance of
7 24 feet from the ground.
- 8 (d) Fencing the areas near the facility substation to ensure that substation equipment is
9 not accessible to the public.
- 10 (e) Providing to landowners a map of underground and overhead transmission lines on
11 their property and advising landowners of possible health risks.
- 12 (f) Designing and maintaining all transmission lines so that alternating current electric
13 fields do not exceed 9 kV per meter at one meter above the ground surface in areas
14 accessible to the public.

15 [Amendment #1 (SFWF); Amendment #1]

16 **82** In advance of, and during, preparation of detailed design drawings and specifications for
17 230-kV and 34.5-kV transmission lines, the certificate holder shall consult with the Utility
18 Safety and Reliability Section of the Oregon Public Utility Commission to ensure that the
19 designs and specifications are consistent with applicable codes and standards.

8. Plants, Wildlife & Habitat Protection Conditions

20 **83** The certificate holder shall conduct wildlife monitoring as described in the Wildlife
21 Monitoring and Mitigation Plan that is incorporated in the Final Order on Amendment #1
22 for the Shepherds Flat Wind Farm as Attachment SFN-A and as amended from time to
23 time. [Amendment #1 (SFWF)]

24 **84** The certificate holder shall restore areas disturbed by facility construction but not
25 occupied by permanent facility structures according to the methods and monitoring
26 procedures described in the Revegetation Plan that is incorporated in the Final Order on
27 Amendment #1 for the Shepherds Flat Wind Farm as Attachment SFN-B and as amended
28 from time to time. [Amendment #1 (SFWF)]

29 **85** The certificate holder shall acquire the legal right to create, enhance, maintain and protect
30 a habitat mitigation area as long as the site certificate is in effect by means of an outright
31 purchase, conservation easement or similar conveyance and shall provide a copy of the
32 documentation to the Department. Within the habitat mitigation area, the certificate
33 holder shall improve the habitat quality as described in the Habitat Mitigation Plan that is
34 incorporated in the Final Order on Amendment #1 for the Shepherds Flat Wind Farm as
35 Attachment SFN-C and as amended from time to time. [Amendment #1 (SFWF)]

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1 **86** The certificate holder shall avoid permanent and temporary disturbance to the areas
2 described in (a) through (g) and, during the times indicated, shall avoid construction
3 disturbance in the areas described in (h) through (k). The certificate holder shall flag these
4 areas for the duration of construction activities nearby and shall ensure that construction
5 personnel avoid disturbance of the areas. The avoidance areas are:

6 (a) All Category 1 habitat and those areas of Category 2 habitat shown on the “ODFW-2”
7 Figures 1 through 12 in the Shepherds Flat Wind Farm Application. [Amendment #1
8 (SFWF)]

9 (b) [text removed by Amendment #1 (SFWF)]

10 (c) All seeps, riparian areas and vernal pools.

11 (d) All water sources for wildlife, including perennial and intermittent streams, stock
12 ponds and watering stations.

13 (e) All faces of bluffs or rock outcroppings.

14 (f) All trees or other structures that contain active raptor nests.

15 (g) For the facility substation and field workshop, all Category 3 habitat. [Amendment #1
16 (SFWF)]

17 (h) [text removed by Amendment #1 (SFWF)]

18 (i) The area within 0.5 miles of Category 3 curlew nesting habitat and the area within 0.5
19 miles the BLM Horn Butte Wildlife Area during the nesting season (March 8 through
20 June 15). Before beginning construction, the certificate holder shall provide to the
21 Department a map showing these avoidance areas relative to areas of potential
22 construction disturbance. The certificate holder may engage in construction
23 activities in these areas at times other than the nesting season.

24 (j) The area within 1,000 feet of any essential, limited and irreplaceable Washington
25 ground squirrel (WGS) habitat within the new areas added to the site by
26 Amendment #1 (excluding the areas within the site boundaries of Shepherds Flat
27 North, Shepherds Flat Central and Shepherds Flat South as approved on September
28 11, 2009) during the period in which the squirrels are active. The certificate holder
29 shall hire a qualified independent professional biologist to conduct pre-construction
30 surveys for State-listed threatened, endangered or sensitive wildlife species in these
31 new areas within 1,000 feet of any area potentially disturbed by facility
32 construction. To determine whether WGS habitat exists and to determine whether
33 WGS are active, the biologist shall search for WGS in suitable habitat using a two-
34 survey protocol approved by the Oregon Department of Fish and Wildlife (ODFW).
35 The certificate holder shall submit the results of the survey to ODFW and to the
36 Department. If signs of WGS activity are observed, the certificate holder shall flag
37 the avoidance area and ensure that construction personnel avoid disturbance of the
38 area until the biologist has determined that the WGS are no longer active.

39 (k) Areas within a suitable buffer around confirmed populations of Laurent’s milk-vetch
40 or any other State-listed threatened or endangered plant species within the new
41 areas added to the site by Amendment #1 (excluding the area within the site
42 boundaries of Shepherds Flat North, Shepherds Flat Central and Shepherds Flat
43 South as approved on September 11, 2009). The certificate holder shall not install
44 facility components or cause temporary disturbance within these areas. The

1 certificate holder shall hire a qualified independent professional biologist to conduct
2 pre-construction surveys for State-listed threatened or endangered plant species in
3 these new areas within 1,000 feet of any area potentially disturbed by facility
4 construction. The certificate holder shall submit the results of the survey to the
5 Department.

6 [Amendment #1]

7 **87** The certificate holder shall microsite the facility in conformance with the industry’s best
8 practices. The certificate holder shall follow the recommendations of a qualified wildlife
9 biologist to avoid building turbine towers in the following locations:

- 10 (a) Areas of increased risk to avian species due to constricted flight paths, such as
11 narrow ridge saddles and gaps between hilltops.
- 12 (b) Areas on slopes greater than 20 percent.
- 13 (c) Areas within a 250-foot setback from the bluff edge along the north site boundary.
- 14 (d) Areas within a 250-foot setback from bluff edges along the eastern site boundary
15 above the Willow Creek Valley.

16 **88** During construction, the certificate holder shall avoid construction activities in areas
17 around active nests of the following species during the sensitive period, as provided in this
18 condition:

<u>Species</u>	<u>Sensitive Period</u>	<u>Early Release Date</u>
Swainson’s hawk	April 1 to August 15	May 31
Ferruginous hawk	March 15 to August 15	May 31
Burrowing owl	April 1 to August 15	July 15

19 The certificate holder shall conduct pre-construction surveys, using a protocol approved
20 by the Oregon Department of Fish and Wildlife (ODFW) to determine whether there are
21 any active nests of these species within 0.5 miles of any areas that would be disturbed
22 during construction. The certificate holder shall search the scheduled construction areas
23 and all areas within 0.5 miles of the construction areas. If a nest is occupied by any of
24 these species after the beginning of the sensitive period, the certificate holder will flag the
25 boundaries of a 0.5-mile buffer area around the nest and shall instruct construction
26 personnel to avoid disturbance of the area. The certificate holder shall hire a qualified
27 independent professional biologist to observe the active nest sites during the sensitive
28 period for signs of disturbance and to notify the Department of any non-compliance with
29 this condition. If the biologist observes nest site abandonment or other adverse impact to
30 nesting activity, the certificate holder shall implement appropriate mitigation, in
31 consultation with ODFW and subject to the approval of the Department, unless the
32 adverse impact is clearly shown to have a cause other than construction activity. The
33 certificate holder may begin or resume construction activities within a buffer area before
34 the ending day of the sensitive period if any known nest site is not occupied by the early
35 release date. If a nest site is occupied, then the certificate holder may begin or resume
36 construction before the ending day of the sensitive period with the approval of ODFW,
37 after the young are fledged. The certificate holder shall use a protocol approved by ODFW
38 to determine when the young are fledged (the young are independent of the core nest
39 site).

- 1 89 The certificate holder shall not remove any trees that are greater than three feet in height.
- 2 90 The certificate holder shall design all aboveground transmission line support structures
3 following the most current suggested practices for avian protection on power lines
4 published by the Avian Power Line Interaction Committee.
- 5 91 The certificate holder shall reduce the risk of injuries to avian species by:
6 (a) Installing turbine towers that are smooth steel structures that lack features that
7 would allow avian perching.
8 (b) Installing meteorological towers that are non-guyed structures to eliminate the risk
9 of avian collision with guy-wires.
10 (c) Avoiding installation of aboveground transmission lines across narrow saddles,
11 ravines and similar features and, where such crossings cannot be avoided, installing
12 line-markers to make the lines more visible to avian species.
- 13 92 The certificate holder shall impose and enforce construction and operation speed limits of
14 5 miles per hour on roads within 1,000 feet of Category 1 or Category 2 Washington
15 ground squirrel habitat identified in the preconstruction survey required under Condition
16 86 and 20 miles per hour on all other facility roads and shall ensure that all construction
17 and operations personnel are instructed on the importance of cautious driving practices
18 while on facility roads. [Amendment #1 (SFWF); Amendment #1]

9. Visual Effects Conditions

- 19 93 To reduce the visual impact of the facility, the certificate holder shall:
20 (a) Mount nacelles on smooth, steel structures, painted uniformly in a matte-finish,
21 neutral white color.
22 (b) Paint substation structures in a neutral color to blend with the surrounding
23 landscape.
24 (c) Not allow any advertising to be used on any part of the facility.
25 (d) Use only those signs required for facility safety, required by law or otherwise
26 required by this site certificate, except that the certificate holder may erect a sign to
27 identify the facility near the field workshop, may paint turbine numbers on each
28 tower and may allow unobtrusive manufacturers' logos on turbine nacelles.
29 (e) Not locate any facility signs along Highway 74.
30 (f) Design signs in accordance with Gilliam County Zoning Ordinance Section 8.030.
31 (g) Maintain any signs allowed under this condition in good repair.
- 32 [Amendment #1 (SFWF)]
- 33 94 The certificate holder shall design and construct the field workshop to be generally
34 consistent with the character of similar buildings used by commercial farmers or ranchers
35 in the area and shall paint the building in a neutral color to blend with the surrounding
36 landscape. [Amendment #1 (SFWF)]
- 37 95 The certificate holder shall not use exterior nighttime lighting except:
38 (a) The minimum turbine tower lighting required or recommended by the Federal
39 Aviation Administration.

- 1 (b) Security lighting at the field workshop and substation, provided that such lighting is
- 2 shielded or downward-directed to reduce glare.
- 3 (c) Minimum lighting necessary for repairs or emergencies.
- 4 (d) Minimum lighting necessary for nighttime construction. The certificate holder may
- 5 use lighting only at the work location and only directed downward to illuminate the
- 6 work area at the turbine base or upward from the base to illuminate the turbine
- 7 tower; construction lighting shall not be directed outward. The certificate holder
- 8 shall use nighttime lighting only with the approval of the owner of the property on
- 9 which the work is conducted and shall provide notice of nighttime construction to
- 10 occupants of all residences within one-half mile of the construction site.

11 [Amendment #1 (SFWF)]

10. Noise Control Conditions

12 96 To reduce noise impacts at nearby residences, the certificate holder shall:

- 13 (a) Confine the noisiest operation of heavy construction equipment to the daylight
- 14 hours.
- 15 (b) Require contractors to install and maintain exhaust mufflers on all combustion
- 16 engine-powered equipment; and
- 17 (c) Establish a complaint response system at the construction manager's office to
- 18 address noise complaints.

19 97 Before beginning construction, the certificate holder shall provide to the Department:

- 20 (a) Information that identifies the final design locations of all turbines to be built at the
- 21 facility.
- 22 (b) The maximum sound power level for the substation transformers and the maximum
- 23 sound power level and octave band data for the turbines selected for the facility
- 24 based on manufacturers' warranties or confirmed by other means acceptable to the
- 25 Department.
- 26 (c) The results of noise analysis of the facility to be built according to the final design
- 27 performed in a manner consistent with the requirements of OAR 340-035-0035
- 28 (1)(b)(B)(iii)(IV) and (VI) demonstrating to the satisfaction of the Department that
- 29 the total noise generated by the facility (including the noise from turbines and
- 30 substation transformers) would meet the ambient degradation test and maximum
- 31 allowable test at the appropriate measurement point for all potentially-affected
- 32 noise sensitive properties.
- 33 (d) For each noise-sensitive property where the certificate holder relies on a noise
- 34 waiver to demonstrate compliance in accordance with OAR 340-035-0035
- 35 (1)(b)(B)(iii)(III), a copy of the a legally effective easement or real covenant pursuant
- 36 to which the owner of the property authorizes the certificate holder's operation of
- 37 the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10
- 38 dBA at the appropriate measurement point. The legally-effective easement or real
- 39 covenant must: include a legal description of the burdened property (the noise
- 40 sensitive property); be recorded in the real property records of the county; expressly
- 41 benefit the certificate holder; expressly run with the land and bind all future owners,

1 lessees or holders of any interest in the burdened property; and not be subject to
2 revocation without the certificate holder’s written approval.

3 **98** During operation, the certificate holder shall maintain a complaint response system to
4 address noise complaints. The certificate holder shall promptly notify the Department of
5 any complaints received regarding facility noise and of any actions taken by the certificate
6 holder to address those complaints. In response to a complaint from the owner of a noise
7 sensitive property regarding noise levels during operation of the facility, the Council may
8 require the certificate holder to monitor and record the statistical noise levels to verify
9 that the certificate holder is operating the facility in compliance with the noise control
10 regulations. [Amendment #1 (SFWF)]

11. Waste Management Conditions

11 **99** The certificate holder shall provide portable toilets for on-site sewage handling during
12 construction and shall ensure that they are pumped and cleaned regularly by a licensed
13 contractor who is qualified to pump and clean portable toilet facilities.

14 **100** During operation, the certificate holder shall discharge sanitary wastewater generated at
15 the field workshop to a licensed on-site septic system in compliance with county permit
16 requirements. The certificate holder shall design the septic system for a discharge capacity
17 of less than 2,500 gallons per day. [Amendment #1 (SFWF)]

18 **101** The certificate holder shall implement a waste management plan during construction that
19 includes but is not limited to the following measures:

- 20 (a) Recycling steel and other metal scrap.
- 21 (b) Recycling wood waste.
- 22 (c) Recycling packaging wastes such as paper and cardboard.
- 23 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste
24 hauler or by using facility equipment and personnel to haul the waste.
- 25 (e) Segregating all hazardous wastes such as used oil, oily rags and oil-absorbent
26 materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for
27 disposal by a licensed firm specializing in the proper recycling or disposal of
28 hazardous wastes.
- 29 (f) Discharging all concrete truck rinse water into foundation holes and completing truck
30 wash-down off-site.

31 **102** The certificate holder shall implement a waste management plan during operation that
32 includes but is not limited to the following measures:

- 33 (a) Training employees to minimize and recycle solid waste.
- 34 (b) Recycling paper products, metals, glass and plastics.
- 35 (c) Recycling used oil and hydraulic fluid.
- 36 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste
37 hauler or by using facility equipment and personnel to haul the waste.
- 38 (e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-
39 absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium

1 batteries for disposal by a licensed firm specializing in the proper recycling or
2 disposal of hazardous wastes.

3 103 Before beginning construction, the certificate holder shall determine whether any
4 construction disturbance would occur in locations not previously investigated for potential
5 jurisdictional waters as described in the *Final Order on Amendment #1*. The certificate
6 holder shall conduct pre-construction investigations in these new areas within 1,000 feet
7 of any area potentially disturbed by facility construction to determine whether any State-
8 jurisdictional waters exist in those locations. The certificate holder shall submit a written
9 report on the pre-construction investigation to the Department of Energy and to the
10 Department of State Lands for approval before beginning construction and shall ensure
11 that construction would have no impact on any jurisdictional water identified in the
12 report. [Amendment #1]

12. New Conditions applicable to RFA2 facility repower

13 104 The certificate holder shall begin construction of the Shepherds Flat North facility
14 modifications, as approved in the Second Amended Site Certificate, within three years
15 after the effective date of the amended site certificate [December 20, 2022]. The
16 certificate holder shall notify the Department when construction of the of the facility
17 modifications, as approved in Request for Amendment 2, commences. Under OAR 345-
18 015-0085(8), the amended site certificate is effective upon execution by the Council Chair
19 and the certificate holder.
20 [Amendment #2]

21 105 The certificate holder shall complete construction of the Shepherds Flat North facility
22 modifications, as approved in the Second Amended Site Certificate, within three years
23 following the date of construction commencement. The certificate holder shall promptly
24 notify the Department of the date of completion of construction of the Shepherds Flat
25 North facility modifications, as approved in Request for Amendment 2.
26 [Amendment #2]

27 106 Prior to RFA2 facility repower activities, the certificate holder shall provide the
28 Department with the foundation uprate analysis on facility turbines. If the analysis results
29 identify necessary mitigation and remediation measures, or operational timing
30 recommendations, the certificate holder shall implement the identified measures and
31 recommendations prior to beginning the repowering activities unless otherwise approved
32 by the Department. [Amendment #2]

33 107 Prior to RFA2 facility repower activities, the certificate holder shall coordinate with the
34 Gilliam County Weed Department and submit to the Department a Roadway Weed
35 Control Plan. The Department shall review and approve the plan, in consultation with the
36 Gilliam County Weed Department. The Roadway Weed Control Plan shall include, as
37 pertinent, but not be limited to, identification of county-listed weeds of economic
38 concern, methods for evaluating weeds within impact area, results of weed assessment,
39 control methods specific to roadway weed control and timing, agency consultation
40 protocol, and process for evaluating success of weed control.

[Amendment #2]

108 The certificate holder shall:

(a) Prior to RFA2 facility repower activities:

- i. Provide an updated habitat assessment of areas of disturbance, based on a protocol approved by the Department in consultation with ODFW.
- ii. Identify monitoring and reference sites, including sites within each habitat category and subtype impacted, and the methodology utilized for selecting the number of monitoring and reference sites should be included.
- iii. Consult with the Department, ODFW and Gilliam County Weed Control Department on timing and methods for revegetation and weed control.

(b) Following completion of RFA2 facility repower activities:

- i. Restore areas temporarily disturbed by RFA2 facility repower activities according to the methods and monitoring procedures described in the Revegetation Plan that is incorporated in the Final Order on Amendment 2 for Shepherds Flat North as Attachment D and as amended from time to time.
- ii. Consult with the Department, ODFW and Gilliam County Weed Control Department on timing and methods for revegetation and weed control.

[Amendment #2]

109 The certificate holder shall:

(a) Prior to RFA2 facility repower activities, the certificate holder shall conduct a pre-construction raptor nest survey, using a protocol approved by the Oregon Department of Fish and Wildlife (ODFW) to determine whether there are any active nests of state sensitive species within 0.5 miles of any areas that would be disturbed.

(b) During RFA2 repower activities, if active raptor nests were identified within 0.5-mile of RFA2 repower activities per (a) of this condition or become active during the sensitive season, per (c) below, the certificate holder shall avoid construction activities within 0.25 mile buffer in areas around active nests of the following species during the sensitive period, as provided in this condition:

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

(c) During RFA2 repower activities, if a nest becomes occupied by any of these species after the beginning of the sensitive period, the certificate holder will flag the boundaries of a 0.25-mile buffer area around the nest and shall instruct construction personnel to avoid disturbance of the area.

(d) During RFA2 repower activities, if active nest sites are observed per (b) or (c) of this condition, the certificate holder shall hire a qualified independent professional

1 biologist to observe the active nest sites during the sensitive period for signs of
2 disturbance and to notify the Department of any non-compliance with this
3 condition. If the biologist observes nest site abandonment or other adverse impact
4 to nesting activity, the certificate holder shall implement appropriate mitigation, in
5 consultation with ODFW and subject to the approval of the Department, unless the
6 adverse impact is clearly shown to have a cause other than construction activity. The
7 certificate holder may begin or resume construction activities within a buffer area
8 before the ending day of the sensitive period if any known nest site is not occupied
9 by the early release date. If a nest site is occupied, then the certificate holder may
10 begin or resume construction before the ending day of the sensitive period with the
11 approval of ODFW, after the young are fledged. The certificate holder shall use a
12 protocol approved by ODFW to determine when the young are fledged (the young
13 are independent of the core nest site).
14 [Amendment 2]

15 110 Following completion of RFA2 facility repower activities, the certificate holder shall
16 conduct two years of fatality monitoring, as described in the *Wildlife Monitoring and*
17 *Mitigation Plan*, or based on protocol otherwise approved by the Department in
18 consultation with ODFW, that is incorporated in the *Final Order on Amendment #2* as
19 Attachment E as amended from time to time. [Amendment #2]

20 111 During RFA2 facility repower activities, the certificate holder shall, or ensure its third-
21 party contractors, reuse or recycle wind turbine blades, hubs and other removed wind
22 turbine components to the extent practicable. The certificate holder shall report in its
23 semi-annual report to the Department the quantities of removed wind turbine
24 components recycled, reused, sold for scrap, and disposed of in a landfill, to the extent
25 practicable. [Amendment 2]

26 112 Prior to the RFA2 facility repower activities, the certificate holder shall submit a Notice of
27 Proposed Construction or Alteration to the Federal Aviation Administration (FAA) and the
28 Oregon Department of Aviation identifying the new maximum blade tip height of 150
29 meters. The certificate holder shall promptly notify the Department of the responses from
30 the FAA and the Oregon Department of Aviation. [Amendment #2]

31 113 Prior to RFA2 facility repower activities, the certificate holder shall provide to the
32 Department:

- 33 a) The maximum sound power level and octave band for the modified wind turbines
34 based on manufacturer' warranties or confirmed by other means acceptable to the
35 Department.
- 36 b) If the information provided to the Department in (a) shows that the modified
37 (repowered) wind turbines would produce a higher maximum sound power level
38 and octave band than the currently installed wind turbines, the certificate holder
39 must conduct a noise analysis of the modified (repowered) turbines. If required, the
40 certificate holder must provide to the Department results of the noise analysis for
41 the proposed RFA2 facility repower, as approved in the Second Amended Site

1 Certificate, performed in a manner consistent with the requirements of OAR 340-
2 035-0035(1)(b)(B)(iii)(IV) and (VI) demonstrating to the satisfaction of the
3 Department that the total noise generated (including the noise from repowered
4 wind turbines and existing substation transformers) would meet the ambient
5 degradation test and maximum allowable test at the appropriate measurement
6 point for all potentially-affected noise sensitive properties.

- 7 c) If the information provided to the Department in (a) shows that the modified
8 (repowered) wind turbines would produce a higher maximum sound power level
9 and octave band than the currently installed wind turbines, the certificate holder
10 must provide to the Department, for each noise-sensitive property where the
11 certificate holder relies on a noise waiver to demonstrate compliance in accordance
12 with OAR 340-035-0035 (1)(b)(B)(iii)(III) related to site certificate Amendment #2
13 activities, a copy of the a legally effective easement or real covenant pursuant to
14 which the owner of the property authorizes the certificate holder's operation of the
15 facility to increase ambient statistical noise levels L10 and L50 by more than 10 dBA
16 at the appropriate measurement point. The easement must only be provided to the
17 Department if the modified wind turbines would produce a higher maximum sound
18 power level and octave band than the currently installed wind turbines and the
19 current noise-easements do not allow ambient statistical noise levels L10 and L50 by
20 more than the statistical noise levels anticipated to occur from the repowered
21 turbines at the appropriate measurement point. The legally-effective easement or
22 real covenant must: include a legal description of the burdened property (the noise
23 sensitive property); be recorded in the real property records of the county; expressly
24 benefit the certificate holder; expressly run with the land and bind all future owners,
25 lessees or holders of any interest in the burdened property; and not be subject to
26 revocation without the certificate holder's written approval.

27 [Amendment #2]

VI. SUCCESSORS AND ASSIGNS

28 To transfer this site certificate or any portion thereof or to assign or dispose of it in any
29 other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0400.

VII. SEVERABILITY AND CONSTRUCTION

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

VIII. GOVERNING LAW AND FORUM

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

IX. EXECUTION AND EFFECTIVE DATE

1 This site certificate may be executed in counterparts and will become effective upon signature
2 by the Chair of the Energy Facility Siting Council and the authorized representative of the
3 certificate holder.

4 **IN WITNESS WHEREOF**, this site certificate has been executed by the State of Oregon, acting by
5 and through its Energy Facility Siting Council, and by North Hurlburt Wind, LLC.

ENERGY FACILITY SITING COUNCIL

NORTH HURLBURT WIND, LLC

By: Caithness Shepherds Flat, LLC, its Manager

By: BEP SF Holdings, LLC, its Managing Member

By: 
Marcia L. Grail (Mar 3, 2021 19:31 PST)

Marcia L. Grail, Chair
Oregon Energy Facility Siting Council

By: 

Print: F. Mitchell Davidson

Date: Mar 3, 2021

Date: March 24, 2021