

**OREGON DEPARTMENT OF ENERGY**

Regarding Statutes, Administrative Rules, and  
Other Requirements Applicable to the Proposed  
**Nolin Hills Wind Power Project**

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**AMENDED PROJECT  
ORDER**

**ISSUED BY  
OREGON DEPARTMENT OF ENERGY  
550 Capital Street NE  
Salem, OR 97301-3742**

**Project Order - Issued January 10, 2018**

**First Amended Project Order - Issued August 2, 2021**

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. EFSC REGULATORY FRAMEWORK.....</b>	<b>3</b>
<b>III. APPLICATION REQUIREMENTS .....</b>	<b>4</b>
(a) <i>Exhibit A – General Information about the Applicant .....</i>	<i>5</i>
(b) <i>Exhibit B – General Information about the Proposed Facility .....</i>	<i>5</i>
(c) <i>Exhibit C – Location .....</i>	<i>6</i>
(d) <i>Exhibit D – Organizational Expertise .....</i>	<i>6</i>
(e) <i>Exhibit E – Permits.....</i>	<i>6</i>
(f) <i>Exhibit F – Property Owners.....</i>	<i>17</i>
(g) <i>Exhibit G – Materials Analysis .....</i>	<i>18</i>
(h) <i>Exhibit H – Geologic and Soil Stability.....</i>	<i>18</i>
(i) <i>Exhibit I – Soils.....</i>	<i>19</i>
(j) <i>Exhibit J – Waters of the State and Removal-Fill.....</i>	<i>19</i>
(k) <i>Exhibit K – Land Use .....</i>	<i>20</i>
(l) <i>Exhibit L – Protected Areas.....</i>	<i>21</i>
(m) <i>Exhibit M – Financial Capability .....</i>	<i>21</i>
(n) <i>Exhibit N – Non-Generating Facility Need.....</i>	<i>22</i>
(o) <i>Exhibit O – Water Use .....</i>	<i>22</i>
(p) <i>Exhibit P – Fish and Wildlife Habitat .....</i>	<i>22</i>
(q) <i>Exhibit Q – Threatened and Endangered Species.....</i>	<i>23</i>
(r) <i>Exhibit R – Scenic Resources.....</i>	<i>24</i>
(s) <i>Exhibit S – Historic, Cultural and Archaeological Resources .....</i>	<i>24</i>
(t) <i>Exhibit T – Recreation.....</i>	<i>25</i>
(u) <i>Exhibit U – Public Services.....</i>	<i>25</i>
(v) <i>Exhibit V – Solid Waste and Wastewater .....</i>	<i>26</i>
(w) <i>Exhibit W – Facility Retirement .....</i>	<i>26</i>
(x) <i>Exhibit X – Noise.....</i>	<i>26</i>
(y) <i>Exhibit Y – Carbon Dioxide Emissions .....</i>	<i>26</i>
(z) <i>Exhibit Z – Cooling Tower Impacts .....</i>	<i>27</i>
(aa) <i>Exhibit AA – Electric and Magnetic Fields .....</i>	<i>27</i>
(bb) <i>Exhibit BB – Other Information .....</i>	<i>27</i>
(cc) <i>Exhibit CC – Other Law .....</i>	<i>27</i>
(dd) <i>Exhibit DD – Specific Standards.....</i>	<i>27</i>
<b>IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY .....</b>	<b>27</b>
<b>V. COMMENTS FROM THE PUBLIC AND REVIEWING AGENCIES.....</b>	<b>30</b>
<b>VI. EXPIRATION DATE OF THE NOTICE OF INTENT .....</b>	<b>30</b>
<b>VII. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS .....</b>	<b>30</b>
<b>VIII. APPLICABILITY AND DUTY TO COMPLY.....</b>	<b>31</b>

## I. INTRODUCTION

This First Amended Project Order is being issued to reflect the applicant's requested addition to its proposal of solar energy generation (preliminary estimated at 260 MW) on approximately 1,896 acres and approximately 120 MW of battery storage, as well as an additional transmission line corridor option for the BPA Stanfield route. These changes increase the proposed facility from 350 MW to 600 MW and the facility micrositing corridor from 13,868 acres to 15,726 acres.

The Oregon Department of Energy (ODOE or the Department) issues this First Amended Project Order for the proposed Nolin Hills Wind Power Project in accordance with Oregon Administrative Rule (OAR) 345-015-0160. The applicant is Nolin Hills Wind, LLC. The proposed facility would be an approximately ~~350-600~~ megawatt (MW) wind and solar photovoltaic energy generation facility located in Umatilla County, as further described below. On September 11, 2017, the applicant submitted to the Department a Notice of Intent (NOI) to apply for a site certificate. The original Project Order was issued on January 10, 2018 and the First Amended Project Order was issued on August 2, 2021.

Following review of an NOI, Oregon Revised Statute (ORS) 469.330(3) and OAR 345-015-0160 require the Department to issue a Project Order to the applicant establishing the application requirements for the proposed facility. ~~Accordingly, the Department issues this~~ The Project Order establishesing the requirements for the site certificate application for the Nolin Hill Wind Power Project. As provided in ORS 469.330(4), this is not a final order and the Department or the Council may amend this Project Order at any time.

As noted, on September 11, 2017, Nolin Hills Wind, LLC submitted to the Department a NOI to file an application for a site certificate for a proposed wind energy generation facility. The February 28, 2020 preliminary application for site certificate reflected this proposal. On November 6, 2020, the applicant submitted a revised preliminary application for site certificate that added solar energy generation, battery storage, and an additional transmission line corridor option for the BPA Stanfield route to its proposal. The proposed ~~wind~~ energy generation facility would have a site boundary of approximately ~~48,196~~~~44,900~~ acres of private land in Umatilla County. The facility would connect to the ~~proposed~~ Bonneville Power Administration (BPA) transmission system either via new and modified/upgraded Umatilla Electric Cooperative (UEC) transmission lines from the northern facility substation to the UEC Cottonwood Substation, or via a new overhead 230-kV transmission line from the northern facility substation to the BPA Stanfield Substation ~~located approximately eight miles north of the site boundary~~.<sup>1</sup> As described in the NOI, the wind energy generation component of the Nolin Hills Wind Power Project would have a nominal electric generating capacity of approximately ~~35~~~~40~~ MW, and, as a result, falls within the jurisdiction of the Energy Facility Siting Council (EFSC or Council).<sup>2</sup> The proposed solar photovoltaic energy generation component on its own would also fall within EFSC's jurisdiction, both because it would use

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<sup>1</sup> Exhibit B of the application for site certificate. BPA has not yet built the Stanfield Substation.

<sup>2</sup> ORS 469.300(11)(a)(J) defines EFSC jurisdictional wind energy facilities.

1 [more than 160 acres located on high-value farmland as defined in ORS 195.300, and because it](#)  
2 [would be located on more than 1,280 acres of land that is predominantly cultivated.](#)<sup>3</sup>

3 Therefore, a site certificate from the Council is required to authorize the construction and  
4 operation of the facility.

5 On October 5, 2017, ODOE issued a public notice of the NOI to the EFSC mailing list and to  
6 adjacent property owners as defined at OAR 345-020-0011(1)(f). ODOE also published the  
7 notice in the *East Oregonian* newspaper that ran on October 7, 2017. The public notice included  
8 information regarding the proposed facility and the EFSC review process, and set November 6,  
9 2017 as the public comment deadline for the NOI.

10 Pursuant to ORS 469.480(1), EFSC must designate as a Special Advisory Group the governing  
11 body of any local government within whose jurisdiction the facility is proposed to be located. At  
12 the October 19, 2017 EFSC meeting, the Council appointed the Umatilla County Board of  
13 County Commissioners as the Special Advisory Group.<sup>4</sup>

14 In compliance with OAR 345-021-0050(1), ODOE prepared a memorandum to reviewing  
15 agencies, Tribal Governments, and the Special Advisory Group, and compiled a distribution list,  
16 including all reviewing agencies identified and defined in OAR 345-001-0010(52). In accordance  
17 with ORS 469.350(2) and OAR 345-020-0040, on October 5, 2017 ODOE sent the memorandum  
18 and a copy of the NOI to each of the reviewing agencies listed in Table 1. The Department  
19 requested comments from reviewing agencies on or before November 6, 2017. Consistent with  
20 ORS 469.330(3), on November 1, 2017, the Department held a pre-application conference with  
21 reviewing agencies on the Nolin Hills Wind Power Project NOI to discuss the proposed facility  
22 and the EFSC review process.

23 At the close of the comment period, ODOE had received two public comments and five  
24 reviewing agency comments. As discussed in Section V, and in accordance with OAR 345-015-  
25 0140, the Department sent the applicant a copy of each comment received for review and  
26 consideration in preparing the application for site certificate.

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<sup>3</sup> [ORS 469.300\(11\)\(a\)\(D\) defines EFSC jurisdictional solar photovoltaic power generation facilities.](#)

<sup>4</sup> Pursuant to ORS 469.480, the governing body of a local government within whose jurisdiction the facility is proposed to be located shall be designated by EFSC as a “special advisory group.”

**Table 1. Notice of Intent Distribution List**

State Agencies	
<ul style="list-style-type: none"> <li>• Oregon Department of Environmental Quality</li> <li>• Oregon Department of Agriculture</li> <li>• Oregon Department of Fish and Wildlife</li> <li>• Oregon Department of Geology and Mineral Industries</li> <li>• Oregon Department of Aviation</li> <li>• Oregon Department of State Lands</li> <li>• Oregon Department of Transportation</li> <li>• Oregon Water Resources Department</li> </ul>	<ul style="list-style-type: none"> <li>• Oregon Department of Forestry</li> <li>• Oregon Public Utilities Commission</li> <li>• Oregon Parks and Recreation Department</li> <li>• Department of Land Conservation and Development</li> <li>• Office of State Fire Marshal</li> <li>• State Historic Preservation Office</li> </ul>
Native American Tribes	
<ul style="list-style-type: none"> <li>• Confederated Tribes of the Umatilla Indian Reservation</li> <li>• Nez Perce Tribe</li> </ul>	<ul style="list-style-type: none"> <li>• Confederated Tribes of the Warm Springs</li> <li>• Confederated Tribes and Bands of the Yakama Indian Nation</li> </ul>
Counties and Cities	
<ul style="list-style-type: none"> <li>• Umatilla County</li> <li>• Morrow County</li> <li>• City of Echo</li> <li>• City of Stanfield</li> </ul>	<ul style="list-style-type: none"> <li>• City of Pendleton</li> <li>• City of Pilot Rock</li> <li>• City of Hermiston</li> </ul>
Other Reviewing Agencies	
<ul style="list-style-type: none"> <li>• Northwest Power Planning Council</li> </ul>	

Section II of this Project Order outlines the EFSC regulatory framework and references the main statutes and rules that govern the EFSC review process [per OAR 345-015-0160(1)]. Section III discusses the application content requirements under OAR 345-021-0010. Section IV specifies the impact assessment analysis areas for the proposed facility. Section V incorporates by reference comments received from reviewing agencies and the public that address matters within the jurisdiction of the Council that the applicant must consider and discuss in the application for a site certificate. Section VI provides the expiration date of the NOI, and Section VII discusses Project Order amendments and the requirements for the Department to find the application for site certificate complete. Section VIII describes the applicant's duty to comply with applicable requirements.

ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain matters. The Project Order identifies only those matters that will be included in and governed by the site certificate, if issued by EFSC, and as applicable to issuance of the site certificate for the proposed facility pursuant to ORS 469.503(3). Throughout this Project Order, the definitions in ORS 469.300 and OAR 345-001-0010 apply, except where otherwise stated or where the context indicates otherwise.

## II. EFSC REGULATORY FRAMEWORK

Issuance of a site certificate is governed by the statutory requirements in ORS 469.300 *et seq.* and administrative rules in OAR chapter 345. The following divisions of OAR chapter 345 include

rules related to application requirements, EFSC review of an application, and construction and operation of an approved facility:

**OAR Chapter 345, Division 21** (Site Certificate Application Requirements) includes the primary site certificate application requirements. See Section III of this Project Order for specific information related to the site certificate application requirements for the proposed facility.

**OAR Chapter 345, Division 22** (Council Standards for Siting Facilities) includes most of the regulatory standards by which the EFSC must evaluate the proposed facility. In addressing each of the Division 21 application requirements, the applicant shall refer to the Division 22 standard to which the requirement relates to ensure the application is responsive to the standards by which the Council must evaluate it.

**OAR Chapter 345, Division 24** (Specific Standards for Siting Facilities) includes additional standards for specific types of EFSC applications. In addressing the Division 21 application requirements, the application shall refer to the Division 24 standards that apply to the proposed facility to ensure the application is responsive to these standards. The Division 24 standards that applies to the proposed facility are OAR 345-024-0010 Public Health and Safety for Wind Energy Facilities, OAR 345-024-0015 Cumulative Effects Standards for Wind Energy Facilities, and OAR 345-024-0090, Siting Standards for Transmission Lines.

**OAR Chapter 345, Division 25** (Site Certificate Conditions) includes the mandatory conditions that EFSC must apply to all site certificates, as well as applicable site-specific and monitoring conditions. Note that per the mandatory condition included at OAR 345-025-0006(10), the Council will include as conditions in the site certificate, if issued, all representations made in the application and supporting record the Council deems to be binding commitments made by the applicant.

**OAR Chapter 345, Division 26** (Construction and Operation Rules for Facilities) includes the compliance plan requirements that will apply if the Council issues a site certificate for the proposed facility. In addressing the Division 21 application requirements, the applicant shall refer to the compliance plan requirements, described in OAR 345-026-0048, and reporting requirements, described in OAR 345-026-0080. Note that, if a site certificate is issued, the certificate holder must also comply with additional construction- and operation-related regulations that may apply to the proposed facility but that may not be covered by the site certificate, per ORS 469.401(4).

### **III. APPLICATION REQUIREMENTS**

The applicant must adhere to the general requirements under OAR 345-021-0000, including, for all state and local government agency permit approvals that the applicant proposes to be included in and governed by the site certificate, the submittal of information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate [OAR 345-021-0000(6)]. The applicant shall also submit copies of

the applications for federally-delegated permits that are needed for construction or operation of the proposed facility [OAR 345-021-0000(7)]. OAR 345-021-0010(1) identifies the required contents of an application for a site certificate. Each of the paragraphs below indicates which provision(s) of OAR 345-021-0010(1)(a) – (dd) will apply to the Nolin Hills Wind Power Project. The Application shall also include the information described in OAR 345-021-0010(3).

**(a) Exhibit A – General Information about the Applicant**

**Applicable Paragraphs:** All paragraphs apply except (C), (E), (F), and (G)

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** Note that paragraph (B) calls for a list of “participating persons, other than individuals.” Please note the definition of “Person” in ORS 469.300(21): “Person” means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people’s utility district, or any other entity, public or private, however organized. Please also note that the applicant is required to notify the Department of any change in the identity or ownership of the applicant prior to the change. This notification requirement continues to apply until the Council issues a final order on the application.

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

**Applicable Paragraphs:** All paragraphs apply except (A)(vi), (A)(vii), (A)(viii), and (E)(iv). Paragraph (D) only applies if the proposed transmission line meets the definition of an energy facility at ORS 469.300(11)(a)(C).

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** The description of the proposed facility in the application will form the basis for the description of the facility in the site certificate. The site certificate, ~~if issued~~, would require that the applicant build the facility “substantially as described” in the site certificate, if approved and issued by Council (OAR 345-025-0006(3)(a)). The description should include details of facility construction, including primary activities and any phasing (if the applicant proposes to pursue or reserve the option of a phased construction approach); and details of routine operations and maintenance activities. ~~(OAR 345-027-0020).~~ The application shall also describe all related and supporting facilities. Please note the definition of related and supporting facilities includes those existing structures that must be substantially modified in connection with the energy facility construction or operation. If the applicant requests Council review and approval of flexibility to site proposed facility components anywhere within the micrositing corridor, the applicant must evaluate impacts of siting facility components anywhere within the entirety of the micrositing corridor (i.e., desktop and field surveys – where access is available – must include the entire micrositing corridor; impact assessment must be based on maximum impact facility layout option within the micrositing corridor).

While specific wind turbine dimensions and parameters (e.g., expected noise) should be described and used in the subsequent impact analysis, specific electric output per turbine or for



the facility in its entirety does not need to be included in or governed by a site certificate, if issued by EFSC.

**(c) Exhibit C – Location**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** Maps shall indicate the “site boundary” as defined in OAR 345-001-0010(54), including any proposed transmission line routes and corridors (as defined in OAR 345-001-0010(13)) for which the applicant seeks Council approval. If the applicant seeks flexibility to site facility components anywhere within a micrositing corridor, please identify in maps and include an evaluation to support the facility “micrositing area,” to be consistent with the intent of a “micrositing corridor” (OAR 345-001-0010(32)). Maps shall provide enough information for property owners potentially affected by the facility to determine whether their property is within or adjacent to the site boundary. Major roads should be named. The Department notes that the applicant has already shared GIS data for the proposed facility, and requests updated GIS data if there are changes to the site boundary, micrositing corridor, or facility layout ~~between the NOI and the submittal of the preliminary application.~~

**(d) Exhibit D – Organizational Expertise**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Organizational Expertise [OAR 345-022-0010]

**Discussion:** ~~Please note that t~~The Council’s review for the Organizational Expertise standard includes the applicant’s ability to construct, operate, and retire the proposed facility in compliance with Council standards and conditions of the site certificate; and, in a manner that protects public health and safety. Please note that Exhibit D requires that if the applicant relies upon mitigation to meet any applicable Council standard, that the applicant provide evidence (i.e., detailed description of mitigation projects) that it can successfully complete such proposed mitigation.

**(e) Exhibit E – Permits**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** Exhibit E shall describe and discuss all permits that the applicant proposes to be included in and governed by the site certificate, as well as state and local permits that are related to the siting, construction, or operation of the proposed facility but are proposed by the applicant to not be included in and governed by the site certificate. Exhibit E shall also describe required federal and federally-delegated permits. For federally-delegated permits needed for construction or operation, the applicant must submit a copy of the permit application to the Department, as required under OAR 345-021-0010(1)(e)(F)(ii) ~~OAR 345-021-000(7).~~



Although the Council does not have jurisdiction over federally-delegated permits, the Council may rely on the determinations of compliance and the conditions in federally-delegated permits in evaluating the application for compliance with Council standards.

## **Federal Approvals**

The applicant must meet all applicable federal requirements. Federal approvals are not included in or governed by an EFSC site certificate.

## **Federally-delegated Permits**

### ***Oregon Department of Environmental Quality – Air Quality Division***

#### **Statute and Rule References**

- OAR Chapter 340, Division 216

#### **Permits**

- Basic Air Contaminant Discharge Permit (ACDP)
  - Information needed for completeness (unless obtained by third-party; see Third-Party Permits discussion) but not EFSC jurisdictional

#### **Discussion**

The Environmental Protection Agency (EPA) has delegated authority to the Oregon Department of Environmental Quality (DEQ) to administer air quality under the Clean Air Act. As described in the September 2017 NOI, a mobile concrete batch plant would be temporarily installed within the site boundary during construction of the facility. The concrete batch plant would require a Basic Air Contaminant Discharge Permit (ACDP). A Basic ACDP authorizes operation of a concrete manufacturing plant that produces more than 5,000 but less than 25,000 cubic yards per year output. ACDPs for mobile, temporary concrete batch plants are associated with the equipment itself. The requirements of OAR 345-021-0000(76) would apply to this federally-delegated permit. If the applicant's third-party contractor would instead obtain the ACDP, the requirements described in the Third-Party Permits section below would apply.

### ***Oregon Department of Environmental Quality — Water Quality Division***

#### **Statute and Rule References**

- ORS Chapter 468B (Water Quality)
- OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)
- ~~• OAR Chapter 340, Division 48 (Certification of Compliance with Water Quality Requirements and Standards)~~

#### **Permits**

- National Pollution Discharge Elimination System (NPDES) Construction Storm Water 1200-C permit
  - Information needed for completeness (unless obtained by third-party; see Third-Party Permits discussion) but not EFSC-jurisdictional
- NPDES Storm Water and Mine Dewatering Discharge 1200-A permit
  - Information needed for completeness (unless obtained by third-party; see Third-Party Permits discussion) but not EFSC-jurisdictional
- ~~Clean Water Act Section 401 Water Quality Certification~~

## Discussion

The EPA has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for construction and operation activities. Based upon the information in the NOI, an NPDES 1200-C permit will be required for the construction of the facility. In accordance with OAR 345-021-0000(76), the applicant must submit to the Department one copy of all applications for federally-delegated permits (including the NPDES permit), or provide a schedule of the date by which the applicant intends to submit the application. Note that the Department will not be able to find the application for site certificate complete before receiving a copy of the NPDES permit application and a response letter or other indication from the DEQ. The DEQ response letter must state that the agency has received a permit application from the applicant, and provide an estimated date when the agency will complete its review and issue a permit decision. The applicant may incorporate this information into Exhibit I (Soils) or Exhibit BB (Other Information) of the site certificate application.

Disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would require either an NPDES 1200-A permit or a WPCF General Permit 1000. If the batch plant was to discharge stormwater from a point source to surface water or to a conveyance system that discharges to surface water, the plant would require an NPDES 1200-A permit. The requirements of OAR 345-021-0000(76) (described in the preceding paragraph) would apply to the NPDES 1200-A permit. If the applicant's third-party contractor would instead obtain the NPDES 1200-A permit, the requirements described in the Third-Party Permits section below would apply. Alternatively, if the batch plant would be located within a construction staging yard for which the applicant would seek coverage under an NPDES 1200-C permit described above, the applicant may seek coverage for the batch plant under the same NPDES 1200-C permit.

If the batch plant would not discharge to surface waters, a WPCF General Permit 1000 would instead be required to dispose of process wastewater and stormwater by recirculation, evaporation, and/or controlled seepage (see the State Permits discussion below).

~~If a Section 404 Permit is needed from U.S. Army Corps of Engineers (Corps) for the discharge of dredge or fill material in waters of the United States, a Section 401 Water Quality Certificate must be granted by DEQ before a Section 404 permit may be issued. The applicant must include~~

~~in the application for a site certificate an itemized demonstration of each applicable provision in OAR 340-048-0020. Removal fill permits are discussed below.~~

### **State Approvals**~~Permits~~

#### **Oregon Department of Aviation**

#### **Statute and Rule References**

- [ORS 836.530 and 836.535](#)
- [OAR Chapter 738, Division 070 \(Physical Hazards to Air Navigation\)](#)

#### **Approval**

- [Determination of No Hazard to Air Navigation](#)
  - [EFSC Jurisdictional](#)

#### **Discussion**

[ORS 836.530 authorizes the Oregon Department of Aviation to define physical hazards to air navigation and determine whether specific types or classes of objects or structures constitute hazards. The standards and procedures for determining when a structure or object constitutes a physical hazard to air navigation are found in OAR Chapter 738, Division 070.](#)

[The applicant must identify the distance and direction of the micro-siting corridor from the following airports:](#)

- [Eastern Oregon Regional Airport at Pendleton \(PDT\)](#)
- [Hermiston Municipal \(HRI\)](#)
- [Lexington \(9S9\)](#)
- [Boardman \(M50\)](#)
- [West Buttercreek \(OL02\)](#)

[In addition, applicant must provide the preliminary latitude, longitude, height above mean sea level, and height above ground level for any proposed facility components that would exceed 200 ft in height above ground level or would be:](#)

- [within 20,000 ft of an airport listed above and would exceed a 100:1 surface from any point on the runway of each airport with at least one runway more than 3,200 ft.](#)
- [within 10,000 ft of an airport listed above and would exceed a 50:1 surface from any point on the runway of each airport with its longest runway no more than 3,200 ft.](#)
- [within 5,000 ft of a public use heliport and would exceed a 25:1 surface from each heliport.](#)

[The applicant must include the requested data using FAA Form 7460-1 or in another format that is approved by the department. The applicant may also provide a supplemental analysis of why it believes the proposed facility components would not exceed the obstruction standards in OAR 738-070-0100 or, if the applicant believes the components would exceed the standards,](#)

why they would not constitute a hazard to air navigation. This information may be provided as part of one or more of the following exhibits: Exhibit E, Exhibit U, Exhibit BB, and Exhibit CC. Satisfaction of this requirement does not relieve the applicant of its responsibility to comply with any regulations and requirements of the Federal Aviation Administration under 14 CFR Part 77.

## **Oregon Department of Fish and Wildlife**

### **Statute and Rule References**

- ORS 509.580 through 509.910
- OAR 635, Division 412 (related to Fish Passage)

### **Permit**

- Fish Passage Plan Approval
  - EFSC jurisdictional

### **Discussion**

OAR Chapter 635, Division 412 (Fish Passage) requires upstream and downstream fish passage at all existing or new artificial obstructions in Oregon waters in which migratory native fish are currently or have historically been present, except under certain clearly defined circumstances. A fish passage plan that complies with OAR Chapter 635, Division 412 shall be included in Exhibit BB of the application, and Fish Passage Plan approval is to be included in and governed by the site certificate, unless the applicant demonstrates that the design and location of the proposed facility would not trigger this requirement.

## **Oregon Department of State Lands**

### **Statute and Rule References**

- ORS 196.795-.990 (Removal of Material, Filling)
- OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands)

### **Permit**

- Removal-Fill Permit
  - EFSC jurisdictional

## Discussion

A removal-fill permit is required if any removal or fill activities occur in streams designated as Essential Indigenous Anadromous Salmonid Habitat or 50 cubic yards or more of material is removed, filled or altered within a jurisdictional water of the state [OAR 141-085-0520(2) and (5)]. Removal-fill permits are state permits under Council jurisdiction.

The applicant must conduct a wetland delineation, to be sent to Department of State Lands (DSL) for concurrence, according to OAR Chapter 141, Division 90 rules. The wetland delineation determines the location of “waters of this state,” as defined in OAR 141-085-0510(91), within the analysis area. Depending upon facility impacts to “waters of this state” a removal-fill permit may be necessary, and the application for site certificate should include information establishing whether a removal-fill permit is required. If a removal-fill permit is required, the application for site certificate should include a concurred delineation from DSL and a complete application for an individual permit which demonstrates consistency with ORS 196.825(1) and provides enough information for considerations under ORS 196.825(3). The individual permit application must demonstrate independent utility for the portion of the facility that is within EFSC jurisdiction, minimization of impacts to water resources, and best use of waters of the state. The applicant should consult directly with DSL regarding the applicable regulations.

Any compensatory wetland mitigation sites located near the facility are also protected by state law. A Compensatory Wetland Mitigation Plan which meets the requirements of OAR 141-085-0680 through OAR 141-085-0715 must be provided to replace all lost functions and values previously provided by the impacted wetlands and waterways.

If the facility requires any dredge or fill of waters of the United States, the applicant must submit to the Department one copy of an application for a Section 404 permit, in accordance with OAR 345-021-0000(~~67~~), and a Section 401 Water Quality Certificate must be granted by DEQ before a Section 404 may be issued. The DSL (removal-fill permit) and the Corps (Section 404 permit) use a joint application form. As discussed previously with regard to Exhibit E and federally-delegated permits, the applicant must provide a letter or other indication from the Corps stating that the agency received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency’s review of the application, and an estimated date for when the agency will complete its review and issue a permit decision.

The Council does not have jurisdiction over the Section 404 permit, but the Council may rely on the determinations of compliance and the conditions in the permit in making its determination about whether other standards and requirements under the Council’s jurisdiction are met.

**Oregon Department of Environmental Quality**

**Statute and Rule References**

- ORS Chapter 454 (Sewage Treatment and Disposal Systems)
- ORS Chapter 468B (Water Quality)
- OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)
- OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)
- OAR Chapter 340, Division 48 (Certification of Compliance with Water Quality Requirements and Standards)

**Permits**

- Onsite Sewage Disposal Construction-Installation Permit
  - EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits discussion
- Water Pollution Control Facilities (WPCF) General Permit 1000
  - EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits discussion
- WPCF General Permit 1700-B (currently expired; see the below discussion)
- Clean Water Act Section 401 Water Quality Certification
  - This permit would not be included in or governed by the site certificate

**Discussion**

As described in NOI, during operation the facility's operations and maintenance building would discharge sanitary waste (in the form of domestic wastewater) to a licensed on-site septic system with a daily sewage flow of fewer than 2,500 gallons. The Applicant indicates in the NOI that its third-party contractor would obtain the necessary Construction-Installation Permit directly from DEQ; this permit is therefore related to the siting and operation of the proposed facility but would not be included in and governed by the site certificate (see the Third-Party Permits discussion below).

In addition, disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would require either a WPCF General Permit 1000 or an NPDES permit. Concrete batch plants that dispose of process wastewater and stormwater by recirculation, evaporation, and/or controlled seepage with no discharge to surface waters require a WPCF General Permit 1000. A WPCF General Permit 1000 is a state permit under Council jurisdiction. If the applicant's third-party contractor would obtain the necessary WPCF General Permit 1000 directly from DEQ, this permit would be related to the siting and operation of the proposed facility but would not be included in and governed by the site certificate (see the Third-Party Permits discussion below).

1 If the batch plant was to instead discharge stormwater from a point source to surface water or  
2 to a conveyance system that discharges to surface water, the plant would require an NPDES  
3 1200-A permit or coverage under the NPDES 1200-C permit for the construction yard in which it  
4 would be located (as discussed under the federally-delegated permits discussion of this Project  
5 Order).

6 [The applicant indicates in Exhibit U of the revised preliminary application for site certificate that](#)  
7 [the solar modules may be washed each year and the wash water would be discharged by](#)  
8 [evaporation and seepage into the ground. On December 10, 2020 DEQ informed ODOE that the](#)  
9 [WPCF General Permit 1700-B, which provided coverage for vehicle, equipment, building, and](#)  
10 [pavement cleaning activities that discharge wash water by means of evaporation, seepage](#)  
11 [and/or irrigation, is expired and administratively extended for current registrants. DEQ did not](#)  
12 [have a timeline for when a renewed permit will be available to new applicants. However, DEQ](#)  
13 [has determined that a WPCF General Permit 1700-B is not required for solar array washing](#)  
14 [activities that would not result in discharge to surface waters, storm sewers, or dry wells, and](#)  
15 [that would not use acids, bases, metal brighteners, steam, or heated water. The use of](#)  
16 [biodegradable, phosphate-free cleaners with cold water is allowed. However, cleaning only](#)  
17 [with cold water is recommended. Chemicals, soaps, or detergents must be used sparingly. The](#)  
18 [applicant indicates that water for washing the solar panels will be applied via robotic panel](#)  
19 [cleaners and will not have any cleaning solvents in it. The applicant or its third-party contractor](#)  
20 [should seek guidance from DEQ prior to conducting solar module washing activities.](#)

21 [If a Section 404 Permit is needed from the Corps for the discharge of dredge or fill material in](#)  
22 [waters of the United States, a Section 401 Water Quality Certificate must be granted by DEQ](#)  
23 [before a Section 404 permit may be issued. This approval would not be included in or governed](#)  
24 [by the site certificate.](#)

## 25 26 ***Oregon Water Resources Department***

### 27 **Statute and Rule References**

- 28 • [ORS 537.110-.330 \(Appropriation under 1909 Act; Limited Licenses\)](#)
- 29 • [ORS 537.505-.795 and ORS 537.992 \(collectively, Ground Water Act of 1955\)](#)
- 30 • [ORS 540.505-.589 \(Changes in Use of Water; Transfer of Water Rights; Exchange\)](#)
- 31 • [OAR Chapter 690, Division 10 \(Appropriation and Use of Ground Water\)](#)
- 32 • [OAR Chapter 690, Division 310 \(Water Right Application Processing\)](#)
- 33 • [OAR Chapter 690, Division 320 \(Water Right Permits\)](#)
- 34 • [OAR Chapter 690, Division 340 \(Water Use Authorizations\)](#)
- 35 • [OAR Chapter 690, Division 380 \(Water Right Transfers\)](#)



- [OAR Chapter 690, Division 385 \(District Water Right Transfers\)](#)

## Permits

- [None required based on information provided in revised preliminary application for site certificate](#)~~Limited License~~

## Discussion

[OAR 345-021-0010\(1\)\(o\)\(F\)](#) requires that if a facility needs a groundwater permit, surface water permit, or water right transfer, that a decision on authorizing such a permit or transfer rests with the Council. Please note that because limited licenses are for the use or storage of ground water or surface water, a decision on authorizing OWRD to issue a limited license also rests with the Council.

[The applicant indicates in Exhibit U of the revised preliminary application for site certificate](#) ~~The NOI indicates~~ that the applicant would obtain water for construction from existing municipal water sources with valid water rights, ~~and states that if water is not available from these sources, the applicant may apply to the Oregon Water Resources Department (OWRD) for a limited water use license, to allow either a new well or an existing landowner's well to be used to obtain facility construction water.~~

[During operations and maintenance, solar modules would be washed once per year; this water will be obtained from City of Hermiston, the City of Pendleton, and/or the City of Echo under an existing municipal water right.](#) ~~The NOI describes that o~~Operational water supplied at the operations and maintenance building would be obtained from an on-site well that would provide ~~approximately 1,600 to 2,000~~ [less than 5,000](#) gallons per day. Because the well would provide no more than 5,000 gallons per day, it would be an exempt use pursuant to ORS 537.545(1)(f) and would not require a permit from OWRD. [Pursuant to OAR 690-215-0080, the landowner may be required to install totalizing flowmeters or dedicated measuring tubes on a well exempted by ORS 537.545 \(Exempt uses\).](#)

[Based upon the information provided by the applicant in the revised preliminary application for site certificate, the facility is not anticipated to require a ground water permit, surface water permit, water right transfer, or limited license.](#)

## ***Oregon Department of Transportation***

### **Statute and Rule References**

- ORS 818.030 (Exemptions from Weight Limitations)
- OAR Chapter 734, Division 82 (Variance Permits Issued for Non-Divisible Loads and Road Use Assessment Fees)
- OAR Chapter 734, Division 51 (Highway Approaches, Access Control, Spacing Standards, and Medians)
- OAR Chapter 734, Division 55 (Pole Lines, Buried Cables, and Miscellaneous Operations)

## Permits

- Oversize Load Movement Permit/Load Registration
  - Not EFSC jurisdictional and no additional information needed for the ASC
- Access Management Permit
  - Not EFSC jurisdictional and no additional information needed for the ASC
- Permit to Occupy or Perform Operations Upon a State Highway
  - Not EFSC jurisdictional and no additional information needed for the ASC

## Discussion

Various permits from Oregon Department of Transportation (ODOT) may be required prior to construction of the facility. Access from Oregon state highways would require an access permit. Utility installations within the right-of-way of a state highway in Oregon require an Occupy or Perform Operations upon a State Highway permit. Movement of construction cranes and other large equipment and materials could also require an Oversize Load Movement permit. These permits are not related to facility siting and are not included in or governed by the site certificate. The applicant or its contractor must secure any applicable ODOT permits directly from ODOT, independent of the site certificate process.

## State Historic Preservation Office

### Statute and Rule References

- ORS Chapter 97, 358, and 390;
- OAR Chapter 736, Division 51

## Permits

- Archaeological Permit
  - Not EFSC jurisdictional and no additional information needed for the ASC

## Discussion

Per ORS 390.235 and 358.920 a person may not excavate or alter a known archaeological site on public or private lands, or make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public or private lands any material of an archaeological, historical, prehistoric or anthropological nature without first obtaining a permit issued by the State Historic Preservation Office (SHPO). An Archaeology Permit is needed for

any excavation or artifact recovery within a known archaeological site on non-federal public lands and private lands in Oregon. This permit is also needed for any subsurface investigation on non-federal public lands. It is important to note that a “known site” is one that any individual is aware of, or that is documented with the state or any other institution.

During facility construction, if a previously unidentified archaeological site is discovered construction will cease and the applicant will report the finding to SHPO and ODOE immediately. In that instance, the permit may be required based on SHPO’s determination. This permit would not be included in and governed by the site certificate.

SHPO issues Archaeological Permits in accordance with ORS 390.235 and OAR 736-051-0000 through 0090. Archaeological Permits have a 30-day review period, require tribal consultation during review, and must meet SHPO standards.

## **Local Permits**

### **Land Use Ordinance References**

- Umatilla County Development Code

### **Permits**

- Umatilla County Zoning Permit
  - EFSC jurisdictional
- Umatilla County Conditional Use Permit
  - EFSC jurisdictional
- Umatilla County Installation of Utilities on County and Public Roads Permit (if applicable)
  - Not EFSC jurisdictional and no additional information needed for the ASC
- Umatilla County Construction of Road Approaches onto County and Public Roads and Private Road Crossings of County and Public Roads Permit (if applicable)
  - Not EFSC jurisdictional and no additional information needed for the ASC
- Umatilla County Building Permit (administered by the Oregon Department of Consumer and Business Services – Building Codes Division)
  - Not EFSC jurisdictional and no additional information needed for the ASC

According to Umatilla County Special Advisory Group, the applicable substantive criteria include, “...specific Conditional Use Permit criteria, Land Use Decision criteria and other applicable standards from the Umatilla County Development Code (UCDC) as well as the County Comprehensive Plan”.

Umatilla County has permitting requirements that may or may not relate to the construction or operation of the facility. The applicant shall identify those permits or approvals and include an analysis of whether each should be included in and governed by the site certificate.

The applicant has elected to request that EFSC determine compliance with the substantive criteria of all affected local governments' comprehensive plans and land use ordinances under ORS 469.504(1)(b). The above-listed local zoning and conditional use permits will be included in and governed by the site certificate. The listed building, utility, and road right of way permits would not be included in or governed by the site certificate.

### **Third-Party Permits**

As noted in the NOI, the applicant may rely upon third-party permits in its application for site certificate. If the applicant does rely upon a state or local government permit issued to a third party [that is related to the siting of the proposed facility](#), the applicant must identify each third-party permit, and, for each, include evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit; evidence that the third party has or, has a reasonable likelihood of obtaining, the necessary permit; and, an assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard [\(OAR 345-021-0010\(1\)\(e\)\(E\)\)](#).

If the applicant relies on a federally-delegated permit issued to a third party [that is related to the siting of the proposed facility](#), the applicant must identify the third-party permit and include evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit. The applicant must provide evidence that the responsible agency has received the permit application, and provide the estimated date when the responsible agency will complete its review and issue a permit decision [\(OAR 345-021-0010\(1\)\(e\)\(F\)\)](#).

[In accordance with OAR 345-022-0010\(4\), if the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.](#)

### **(f) Exhibit F – Property Owners**

**Applicable Paragraphs:** Paragraph (C) of the Rule applies.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** [For those portions of the facility that would be located within](#) ~~As the proposed facility would be located entirely within~~ an area zoned Exclusive Farm Use (EFU), OAR 345-0201-0010(1)(~~Af~~)(~~iii~~)(~~E~~) applies and requires notice to property owners [within 500 feet of the property](#)

1 which is the subject of the ASC (i.e., 500 feet from the property boundary of the property on  
2 which the site boundary is located) ~~within 500 feet of the site boundary.~~ For those portions of the  
3 facility that would be located outside an urban growth boundary and not within a farm or forest  
4 zone, OAR 345-021-0010(1)(A)(ii) applies and requires notice to property owners within 250 feet  
5 of the property which is the subject of the ASC (i.e., 250 feet from the property boundary of the  
6 property on which the site boundary is located).

7  
8 The Council requires notice to all owners of record, ~~(as shown on the most recent property tax~~  
9 ~~assessment roll)~~ within the specified distance from the from the property on which the site  
10 boundary is located ~~proposed site boundary.~~ In order to ensure notifications are provided using  
11 the most up-to-date property owner list, Exhibit F in the preliminary ASC should indicate that,  
12 pursuant to direction by the Department, the property owner list will be generated just prior to  
13 the Department's determination of application completeness and in coordination with  
14 Department staff.

15  
16 The property owner notification list must be accompanied by one or more maps that include the  
17 site boundary, the tax lots on which the site boundary is located, the buffered ~~the~~ area  
18 surrounding the site boundary consistent with the OAR 345-021-0010(1)(f)(C) site distance  
19 requirement, and the properties/tax lots that are within the applicable distances. The property  
20 owner notification list must include the date the information was obtained from the county or  
21 city assessor. Maps shall correspond to the property owner list, be legible, and clearly identify  
22 tax lot ID numbers as well as adjacent road names.

23 **(g) Exhibit G – Materials Analysis**

24 **Applicable Paragraphs:** All paragraphs apply.

25 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; Soil  
26 Protection [OAR 345-022-0022]

27 **Discussion:** The applicant shall include in the application any proposed fuel storage areas,  
28 vehicle maintenance areas, or other areas that will be utilized for activities that could store  
29 hazardous materials, including potential battery storage facilities. The applicant shall identify  
30 the expected storage locations and quantities of hazardous and non-hazardous materials  
31 expected to be used during construction and operation of the facility.  
32

33 **(h) Exhibit H – Geologic and Soil Stability**

34 **Applicable Paragraphs:** All paragraphs apply

35 **Related Council and Other Standards:** Structural Standard [OAR 345-022-0020]

36 **Discussion:**

37 The Oregon Department of Geology and Mineral Industries (DOGAMI) provides technical  
38 review and recommendations on compliance with the Council's Structural Standard. The  
39 applicant must provide a summary of consultation with DOGAMI regarding the appropriate

methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed for the application.

A geologic report included in Exhibit H shall meet the Oregon State Board of Geologist Examiners geologic report guidelines, as determined based on consultation with DOGAMI.

As described in the Structural Standard at OAR 345-022-0020(2), the Council may not impose the Structural Standard to approve or deny an application for site certificate for a facility that would produce power from wind or solar energy, though the Council may apply the requirements of OAR 345-022-0020(1) to impose conditions on a site certificate issued for such a facility.

**(i) Exhibit I – Soils**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Soil Protection [OAR 345-022-0022]

**Discussion:** This exhibit shall identify the major soil types and include a description of current and historical (if distinct from current) land uses that require or depend on productive soils. The applicant shall include information describing the impact of construction and operation of the proposed facility on soil conditions in the analysis area. The application should cross-reference any applicable information related to the federally-delegated NPDES 1200-C permit application, ~~as applicable~~. OAR 345-021-0000(7) requires the applicant to submit one copy of all applications for federally-delegated permits, or provide a schedule of the date by which the applicant intends to submit the application. In addition to a copy of the federally-delegated permit application, the applicant must also provide a letter or other indication from the DEQ stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency's review of the application, and estimating the date when the agency will complete its review and issue a permit decision. A draft erosion and sediment control plan must be provided for review if the applicant will rely upon the erosion and sediment control plan to meet the Soil Protection standard. Please note that an erosion and sediment control plan that meets the NPDES 1200-C requirements may not necessarily be sufficient on its own to meet the EFSC Soil Protection standard.

**(j) Exhibit J – Waters of the State and Removal-Fill**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; Removal of Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands [OAR Chapter 141, Division 85]

**Discussion:** Per the Exhibit J requirement, the application shall include a description of all areas within the site boundary that might be waters of this state and a map (s) showing the location of these features. If a removal-fill permit is necessary for the facility, the information required for

Council to make a decision on the removal-fill permit application must be included in the application. [Wetland delineation reports and removal-fill permit application materials can be sent directly by the applicant to DSL; however, please note that all materials as well as DSL's concurrence with the wetland delineation must also be submitted to the Department as part of the ASC. The Department will work closely with DSL in review of the removal-fill permit application, if applicable. For EFSC-jurisdictional facilities, authorization of a removal-fill permit is an EFSC decision; should a permit be issued, DSL will maintain the ongoing responsibility for compliance with any associated permit conditions.](#)

**(k) Exhibit K – Land Use**

**Applicable Paragraphs:** Paragraphs (A) and (C) of the rule apply.

**Related Council and Other Standards:** Land Use [OAR 345-022-0030]

**Discussion:** The Council's Land Use standard requires an evaluation for compliance with the statewide planning goals. Under 469.504(1), the applicant may establish compliance with the applicable statewide planning goals either by obtaining local land use approval under ORS 469.504(1)(a) or by obtaining Council approval under ORS 469.504(1)(b). The applicant has indicated in the NOI that it has elected to seek a Council determination of compliance under ORS 469.504(1)(b). Within Exhibit K, since the applicant has elected to obtain a Council determination on land use under ORS 469.504(1)(b), paragraphs A and C of OAR 345-021-0010(1)(k) apply; paragraph B does not apply. The Department understands that the proposed facility is not located on federal land, so paragraph (D) does not apply.

The facility would be located on land zoned EFU in Umatilla County. [In addition, the portion of the UEC Cottonwood transmission line corridor near Interstate 84 includes areas of Rural Tourist Commercial, Agri- Business, and Light Industrial zoning.](#) As provided in ORS 469.401(3), if the Council issues a site certificate, Umatilla County would be bound to issue all required permits and other land use approvals, subject to the conditions set forth in the site certificate, that are included in and governed by the site certificate.

The applicant should discuss each applicable substantive criteria from the Umatilla County comprehensive plan and zoning ordinances, and should demonstrate how the proposed facility complies with those criteria. Umatilla County provided its [initial](#) list of applicable substantive criteria in a comment letter on the NOI, [when the proposed facility was limited to wind energy generation and the specific proposed transmission corridors were unknown. The county then reviewed the revised preliminary application for site certificate Exhibit K, which included updates to the applicant's proposed facility design, and concluded that the applicant appeared to have provided a comprehensive list of the County's applicable substantive criteria.](#) If the proposed facility does not comply with one or more of the applicable substantive criteria, the applicant must demonstrate that the facility nevertheless complies with the applicable statewide planning goals or that an exception to a goal is justified under ORS 469.504(2) and OAR 345-022-0030(4).

Exhibit K shall also provide evidence that the proposed facility would comply with any directly-applicable LCDC administrative rules and statutory requirements related to the proposed



facility. Exhibit K shall provide evidence that the proposed facility would comply with the applicable administrative rules at OAR 660-033-0130(37) [and OAR 660-033-0130\(38\)](#) related to development of wind power facilities [and solar powered facilities](#) on EFU zoned land, as well as rules related to associated transmission lines to energy generating facilities. [Please note that in May 2019 LCDC adopted permanent amendments to OAR 660-033-0130\(38\).](#)

[The proposed facility requires a Goal 3 exception. The Council's goal exception process is described at OAR 345-022-0030\(4\). A goal exception is necessarily based on site-specific issues and reasons; as such, the applicant must provide site-specific evidence that the proposed facility should be granted a goal exception.](#)

**(l) Exhibit L – Protected Areas**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Protected Areas [OAR 345-022-0040]

**Discussion:** The application must address the potential impacts to protected areas identified in OAR 345-022-0040 within the analysis area. Please note that compliance with the DEQ noise rules (Exhibit X) does not correlate to compliance with the noise assessment considered in the Protected Areas standard. Particularly, while construction noise is exempt from the DEQ noise rules, construction noise must be considered under the Protected Areas standard. However, information developed to demonstrate compliance with the DEQ noise rules (such as noise modeling) can be used in the assessment under the Protected Areas standard. [A visual impact assessment is required as part of Exhibit L; while no specific methodology is required by EFSC rule, the applicant must submit evidence adequate to demonstrate how potential impacts from the proposed facility would not be likely to result in potentially significant, adverse impacts under the Protected Areas standard. Visual simulations or other visual representations are not required but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to Protected Areas.](#)

**(m) Exhibit M – Financial Capability**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

**Discussion:** The application shall include information about the applicant's financial capability, including the applicant's legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements. To find that the proposed facility satisfies [section \(2\) of the Retirement and Financial Assurance Standard \(OAR 345-022-0050~~\(2\)~~\)](#), the Council must find that the applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The application shall include the type and amount of the applicant's proposed bond or letter of credit to satisfy the requirements of OAR 345-022-0050.

**(n) Exhibit N – Non-Generating Facility Need**

**Applicable Paragraphs:** Exhibit N does not apply because the proposed facility is not a nongenerating facility for which the applicant must demonstrate need for the facility.

**(o) Exhibit O – Water Use**

**Applicable Paragraphs:** All paragraphs apply except (D).

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; OAR 690, Divisions 310 and 380 (Water Resources Department permitting requirements)

**Discussion:** Exhibit O of the application must describe water use during construction and operation of the proposed facility. The application must identify the sources of water to be used, and include an estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions. Exhibit O shall specify the final disposition of all wastewater and describe and quantify water loss from the facility site.

If the proposed facility does not need a groundwater permit, a surface water permit, or a water right transfer, Exhibit O shall include an explanation as to why such a permit or transfer is not required for construction and operation of the proposed facility, as required by paragraph (E). If such a permit is necessary, the ASC shall include the evidence and application materials to support a determination by Council that OWRD should issue such a permit.

**(p) Exhibit P – Fish and Wildlife Habitat**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Fish and Wildlife Habitat [OAR 345-022-0060]

**Discussion:** The applicant shall consult with ODFW in developing the application materials. Exhibit P shall include analysis of how the evidence provided supports a finding by the Council that the proposed facility meets the Council's Fish and Wildlife Habitat standard. Exhibit P must include a description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey. Exhibit P must also identify all state sensitive species that may be present in the analysis area.

If fish and wildlife habitat or state sensitive species are identified within the analysis area that could be adversely affected as a result of the proposed facility, the applicant shall include a description of the nature, extent, and duration of potential adverse impacts and a description of any proposed mitigation measures. Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six habitat categories and establishes a mitigation goal for each category. The applicant must identify the appropriate habitat category for all areas affected by the proposed facility and provide the basis for each category designation. The habitat classification is, subject to the Department and ODFW review. A map showing the different habitat categories is required under sub-paragraph (C) of OAR 345-021-0010(1)(p), and inclusion of vegetation classes within the map is recommended. The map must be of sufficient

scale to show details. Exhibit P must include tables depicting the estimated temporary and permanent impacts, broken down by habitat categories [and subtype](#).

The applicant must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation, [including measures proposed by the applicant to avoid, reduce, or mitigate adverse impacts on habitat and state sensitive species](#). This information may be incorporated into a proposed Revegetation and Noxious Weed Control Plan and a proposed Habitat Mitigation Plan as attachments to Exhibit P. [Exhibit P and the HMP must clearly demonstrate how the applicant will provide mitigation, including compensatory mitigation, in accordance with the Council's standard. This includes identifying in the HMP the location of a specific habitat mitigation area\(s\) that could be used to provide compensatory mitigation, as well as enhancement actions that could be implemented at the habitat mitigation area to provide the appropriate mitigation.](#)

[The HMP shall identify the habitat categories of the habitat mitigation area. Fieldwork at the habitat mitigation area\(s\), landowner interviews, and/or other evidence may be required by the Department, in consultation with ODFW, to provide site-specific information about the enhancement potential of the habitat mitigation area\(s\). The HMP must ultimately demonstrate that the mitigation acreage and ratios, enhancement actions, and success criteria at the potential habitat mitigation area\(s\) can provide a no net loss of habitat quantity or quality for impacts to habitat categories 2 through 4, a net benefit in habitat quantity or quality for impacts to Category 5 habitat, and for impacted Category 2 acres, that there is enough acreage within the habitat mitigation area\(s\) with potential to provide a no net loss and a net benefit in habitat quality through uplift.](#)

[The HMP shall describe the mechanism, or mechanism options, for acquiring the legal right to maintain and enhance the habitat mitigation area. The HMP shall include draft success criteria for the proposed ecological uplift actions, and describe a process for evaluating monitoring and reference site locations, prior to construction. This information is required for the Department to find the application complete.](#)

#### **(q) Exhibit Q – Threatened and Endangered Species**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Threatened and Endangered Species [OAR 345-022-0070]

**Discussion:** ~~The Oregon Department of Agriculture (ODA) provides technical review and recommendations regarding compliance with the Council's Threatened and Endangered Species standard (OAR 345-022-0070) as it relates to plant species, and ODFW provides technical review and recommendations related to fish and wildlife species. However, the Department has been informed that the ODA no longer supports this program.~~

The application should include a list of state-listed endangered, threatened, and candidate species that have potential to occur in the analysis area. The applicant should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species maintained by the Oregon Biodiversity Information Center.

For state-listed threatened or endangered plant species, field surveys are required for any species that may occur within the analysis area and may potentially be impacted by the facility. The applicant should consult with ODFW and Oregon Department of Agriculture Native Plant Conservation Program, if applicable, regarding field survey methods, appropriate survey seasons, qualifications of field survey personnel, and the information to be included in a field survey report.

**(r) Exhibit R – Scenic Resources**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Scenic Resources [OAR 345-022-0080]

The application should include an analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area. For the purposes of Exhibit R, “local” land use plans include state, county, and city planning documents or inventories. For any significant or important scenic resources identified in a local, tribal or federal land management plan, the applicant shall include in the application for site certificate an evaluation of the proposed facility’s consistency or compliance with any development or land use criteria included in the land management plan for the identified resource. The applicant shall also describe the measures it proposes to avoid, reduce, or otherwise mitigate any significant adverse impacts to these scenic resources. A visual impact assessment is required as part of Exhibit R; while no specific methodology is required by EFSC rule, the applicant must submit evidence adequate to demonstrate why the proposed facility is compliance with the Scenic Resources standard. Visual simulations or other visual representations are not required but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to Scenic Resources.

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

**Applicable Paragraphs:** All paragraphs apply.<sup>5</sup>

**Related Council and Other Standards:** Historic, Cultural, and Archaeological Resources [OAR 345-022-0090]

**Discussion:** The application should include evidence of consultation with the potentially affected tribes identified by the Legislative Commission on Indian Services, including the Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes and Bands of the Yakama Indian Nation, and the Nez Perce Tribe regarding

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<sup>5</sup> Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information about cultural resources should not be included in the text of application for a site certificate. Such information, including archaeological survey reports, should be provided confidentially under separate cover in hard copy format only after consultation with the Department. Confidential material shall also be provided directly to SHPO, following guidance from the Department and SHPO. Please contact the Department to discuss current practices regarding treatment and submittal of confidential material.

archaeological and cultural sites and materials within the ~~site boundary~~[analysis area](#). [See OAR 345-001-0010(521)(a).] The affected tribes can provide technical review and recommendations in reference to the Council's Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090). The Nez Perce Tribe notified ODOE on October 6, 2017 that the tribe defers to the Confederated Tribes of the Umatilla Indian Reservation with regards to the Nolin Hills Wind Power Project.

The application shall include the survey methodology, survey areas, and the results of all surveys conducted for historic, cultural, and archaeological resources, as well as an analysis of any significant adverse impacts anticipated and proposed mitigation measures. The applicant should work closely with SHPO to understand the report formatting and submission requirements, and to receive guidance on any survey protocols.

As described in the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(2), the Council may issue a site certificate for a facility that would produce power from wind energy [or solar energy](#) without making the findings of the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(1), though the Council may apply the requirements of OAR 345-022-0090(1) to impose conditions on a site certificate issued for such a facility.

**(t) Exhibit T – Recreation**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Recreation [OAR 345-022-0100]

**Discussion:** The application shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. Please list all recreational opportunities in the analysis area and the applicant's analysis of whether those recreational opportunities are considered "important" or not. As described under the Protected Areas standard section above, please note that compliance with the DEQ noise rules (Exhibit X) does not correlate to compliance with the noise assessment considered in the Recreation standard. Particularly, while construction noise is exempt from the DEQ noise rules, construction noise must be considered under the Recreation standard. However, information developed to demonstrate compliance with the DEQ noise rules (such as noise modeling) can be used in the assessment under the Recreation standard.

**(u) Exhibit U – Public Services**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Public Services [OAR 345-022-0110]

**Discussion:** The application shall provide information related to the facility's potential impacts to the ability of public and private providers within the analysis area to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools (OAR 345-022-0110).

As described in the Public Services standard at OAR 345-022-0110(2), the Council may issue a site certificate for a facility that would produce power from wind energy without making the findings of the Public Services standard at OAR 345-022-0110(1), though the Council may apply the requirements of OAR 345-022-0110(1) to impose conditions on a site certificate issued for such a facility.

**(v) Exhibit V – Solid Waste and Wastewater**

**Applicable Paragraphs:** All paragraphs apply

**Related Council and Other Standards:** Waste Minimization [OAR 345-022-0120]; Public Services [OAR 345-022-0110]

**Discussion:** To support a finding by the Council as required by OAR 345-022-0120, the application shall provide information about the applicant's plans to minimize the generation of solid waste and wastewater in the construction and operation of the facility, and to recycle or reuse solid waste and wastewater. Information in Exhibit V may be incorporated by reference in Exhibit U's discussion of impacts to solid waste and wastewater service providers.

As described in the Waste Minimization standard at OAR 345-022-0120(2), the Council may issue a site certificate for a facility that would produce power from wind energy without making the findings of the Waste Minimization standard at OAR 345-022-0120(1), though the Council may apply the requirements of OAR 345-022-0120(1) to impose conditions on a site certificate issued for such a facility.

**(w) Exhibit W – Facility Retirement**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

**Discussion:** The application shall provide an estimate of retirement costs, including a detailed explanation and justification of the methodology it uses to estimate retirement costs. The Council's Retirement Standard requires evidence that the site can be restored, following facility retirement, to a useful and non-hazardous condition.

**(x) Exhibit X – Noise**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; DEQ Noise Control Regulations [ORS 467.020 and ORS 467.030; OAR 340, Division 35]

**Discussion:** The application shall contain a noise analysis and information to support a Council finding that the proposed facility would comply with applicable DEQ noise control standards in OAR 340-035-0035.

**(y) Exhibit Y – Carbon Dioxide Emissions**

**Applicable Paragraphs:** Exhibit Y does not apply because the proposed facility is not a base load gas plant, a non-base load power plant, or a non-generating energy facility that emits carbon dioxide.



**(z) Exhibit Z – Cooling Tower Impacts**

**Applicable Paragraphs:** Exhibit Z does not apply because the proposed facility would not include an evaporative cooling tower.

**(aa) Exhibit AA – Electric and Magnetic Fields**

**Applicable Paragraphs:** All paragraphs apply.

**Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

**Discussion:** As the proposed facility would have a transmission line as a related and supporting facility, the provisions of Exhibit AA apply.

**(bb) Exhibit BB – Other Information**

**Related Council Standard:** General Standard of Review [OAR 345-022-0000]

No additional information is required.

**(cc) Exhibit CC – Other Law**

**Related Council Standard:** General Standard of Review [OAR 345-022-0000]

All requirements apply.

**(dd) Exhibit DD – Specific Standards**

**Applicable Paragraphs:** Paragraphs (A) and (C) apply.

**Related Council and Other Standards:** Public Health and Safety for Wind Energy Facilities [OAR 346-024-0010]; Cumulative Effects Standard for Wind Energy Facilities [OAR 345-024-0015]; and Specific Standards for Transmission Lines [OAR 345-024-0090].

**Discussion:**

The Applicant should include in Exhibit DD information to support findings by the Council that the proposed facility complies with the Public Health and Safety Standards for Wind Energy Facilities (OAR 345-024-0010) and the Siting Standards for Wind Energy Facilities (OAR 345-024-0015), or refer to other exhibits as appropriate.

The Council applies specific standards for transmission lines under its jurisdiction in OAR 345-024-0090. The applicant should provide analysis regarding compliance with OAR 345-024-0090 in Exhibit DD or refer to Exhibit AA as appropriate.

**IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

The analysis areas are the minimum areas that the applicant must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the applicant's responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are more likely to occur. [Please Note:](#) If significant impacts could occur beyond the analysis areas described here, then the applicant must assess those impacts in the application for a site



1 certificate and show how the facility would comply with the applicable standard with regard to  
2 the larger area where impacts could occur.

3 For all potential impacts, the analysis area includes all the area within the site boundary, as  
4 defined in OAR 345-001-0010(554), [as well as any additional distances beyond the site](#)  
5 [boundary described in Table 2, Analysis Areas below](#). The application for site certificate must  
6 specifically describe the site boundary and provide a map showing the proposed site boundary,  
7 including all related and supporting facilities. The minimum required analysis areas are  
8 presented in Table 2.

**Table 2. Analysis Areas**

Affected Standard or Resource	Exhibit	Analysis Area <sup>6</sup>
<a href="#">Structural Standard</a>	<a href="#">Exh. H</a>	<a href="#">The area within the site boundary, notwithstanding the distances related to an assessment of seismic hazards required by OAR 345-021-0010(1)(h) and any additions to the analysis area as determined through applicant consultation with DOGAMI.</a>
<a href="#">Soil Protection</a>	<a href="#">Exh. I</a>	<a href="#">The area within the site boundary.</a>
<a href="#">Wetlands</a>	<a href="#">Exh. J</a>	<a href="#">The area within the site boundary.</a>
Land Use	Exh. K	The area within the site boundary and 0.5 miles from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary and 0.5 miles from the site boundary.
Threatened and Endangered Species	Exh. Q	The area within the site boundary and 5 miles from the site boundary (for the transmission line, the analysis area is only the area within the site boundary).
Scenic Resources	Exh. R	The area within the site boundary and 10 miles from the site boundary.
<a href="#">Historic, Cultural and Archaeological Resources</a>	<a href="#">Exh. S</a>	<a href="#">The area within the site boundary. If potentially affected resources, including but not limited to Traditional Cultural Properties or Historic Properties of Religious and Cultural Significance to Indian Tribes, are identified (e.g., through consultation with SHPO and/or coordination with potentially affected tribes as identified by the Legislative Commission on Indian Services), the analysis area shall be expanded to include those resources, if determined warranted by ODOE.</a>
Recreational Opportunities	Exh. T	The area within the site boundary and 5 miles from the site boundary (for the transmission line, the analysis area is only the area within the site boundary).
Public Services	Exh. U	The area within the site boundary and 10 miles from the site boundary.
<a href="#">Noise</a>	<a href="#">Exh. X</a>	<a href="#">The area within and extending 1-mile from the site boundary.</a>

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<sup>6</sup> The applicant should note that analysis areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. The applicant is not required to perform comprehensive field surveys of the entire analysis area if another method of impact assessment is suitable. [However, the Department reserves the](#)

**V. COMMENTS FROM THE PUBLIC AND REVIEWING AGENCIES**

The Department received two public comments and five reviewing agency comments on the NOI. [The Department has since received reviewing agency comments on the preliminary application for site certificate.](#) These comments have been provided under separate cover to the applicant and are incorporated by reference in this order. Within each applicable exhibit of the application, the applicant shall address those concerns raised by the public and reviewing agencies that are under the jurisdiction of the Council.

**VI. EXPIRATION DATE OF THE NOTICE OF INTENT**

In accordance with OAR 345-020-0060, the Nolin Hills Wind Power Project NOI ~~will~~[was originally scheduled to](#) expire two years after the date of submittal, on September 11, 2019. [On July 15, 2019,](#)~~unless~~ the applicant ~~submitted~~[submitted](#) a petition to Council to extend the expiration date [pursuant to OAR 345-020-0060\(1\). At its August 23, 2019 Council meeting, EFSC granted the applicant's request to extend the expiration date of the Notice of Intent to September 11, 2020.](#)<sup>7</sup> The applicant submitted a preliminary ASC on February 28, 2020 ahead of the NOI expiration date. ~~Such a petition must be submitted no less than 45 days before the NOI expiration date. If the Council finds that the extension petition shows good cause, it may extend the NOI expiration date by up to one year.~~

**VII. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS**

The Council or the Department may amend this Project Order at any time [[ORS 469.330\(4\) and OAR 345-015-0160\(3\)](#)]. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility (ORS 469.503(3)).

Under OAR 345-015-0190(5), when the Department determines the application for a site certificate contains adequate information for the Council to make findings [or impose conditions](#) on all applicable Council standards, the Department will [issue a determination of completeness on](#) ~~find~~ the application for a site certificate ~~complete~~. The Department may find the application complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 0010. In accordance with OAR 345-015-0190(9), after a determination that an application for a site certificate is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application for a site certificate.

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[right to require field surveys if it is determined that a different method of analysis is insufficient to provide the level of information necessary to find the application complete. It is recommended that the Department be consulted if the applicant wishes to propose alternative methods of analysis than field surveys.](#)

<sup>7</sup> [NHWNOIDoc29 Order Granting an Extension to NOI 2019-08-23.](#)

**VIII. APPLICABILITY AND DUTY TO COMPLY**

Failure to include an applicable statute, rule, ordinance, permit or other requirement in this Project Order does not render that statute, rule, ordinance, permit or other requirement inapplicable, nor in any way relieves applicant from the duty to comply with the same.

**OREGON DEPARTMENT OF ENERGY**

A handwritten signature in blue ink, appearing to read "T. Cornett", is shown within a light blue rectangular box.

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Todd R. Cornett, Assistant Director, Siting Division  
Energy Facility Siting Division  
Oregon Department of Energy

Date of Issuance: ~~January 10, 2018~~ August 2, 2021