

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

In the Matter of the Request for Amendment #1 of
the Site Certificate for the Montague Wind Power
Facility

)
)
)
)
FINAL ORDER ON
AMENDMENT #1 AND REQUEST
FOR TRANSFER OF SITE
CERTIFICATE

June 21, 2013

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Attachments:

Attachment A: Redline ODOE-Montague Site Certificate

Attachment B: Redline ODOE-PGE Form Site Certificate

Attachment C: Comments on the Proposed Order

1 **I. INTRODUCTION**

2
3 The Oregon Energy Facility Siting Council (Council) issues this final order in accordance with ORS
4 469.405 and OAR 345-027-0070. This final order addresses a request by the certificate holder,
5 Montague Wind Power Facility, LLC (Montague or certificate holder), for amendment of the Site
6 Certificate for the Montague Wind Power Facility¹ (Site Certificate), and a request by the
7 transferee, Portland General Electric (PGE or transferee) to transfer the First Amended Site
8 Certificate for the Montague Wind Power Facility from Montague to PGE upon closing, should
9 closing occur, as described in more detail under Section III.

10
11 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order.

12
13 **I.A. Name and Address of Certificate Holder**

14
15 Montague Wind Power Facility, LLC
16 1125 NW Couch Street, Suite 700
17 Portland, OR 97209

18
19 Individual Responsible for Submitting this Request:

20
21 Sara McMahon Parsons
22 Iberdrola Renewables, LLC
23 1125 NW Couch Street, Suite 700
24 Portland, OR 97209

25
26 Individual Responsible for Submitting this Transfer Request:

27
28 Lenna Cope
29 Portland General Electric Company
30 121 SW Salmon Street
31 3 WTC BR05
32 Portland, OR 97204

33
34 **I.B. Description of the Facility**

35
36 The Oregon Energy Facility Siting Council (Council) issued the Site Certificate in September
37 2010, authorizing the construction and operation of the facility with up to 269 wind turbines
38 and a peak generating capacity of up to 404 megawatts (MWP or Facility). The Facility is located
39 on private land south of the city of Arlington, in Gilliam County, Oregon. The Facility, once
40 constructed, will connect to the regional transmission system through Bonneville Power

¹ Energy Facility Siting Council, Site Certificate for the Montague Wind Power Facility (Sept. 10, 2010). The Site Certificate was not executed until September 14, 2010 when signed by Montague.

1 Administration's Slatt Substation and existing 500-kilovolt Slatt-Buckley transmission line via an
2 overhead 230-kV transmission line.

3 4 **II. THE AMENDMENT PROCESS**

5 6 **II.A. Description of the Proposed Amendments**

7 8 **II.A.1. Summary of Proposed Changes to Site Certificate**

9
10 Montague requests an amendment to the Site Certificate authorizing an extension of the
11 deadlines for beginning and completing construction by two years, and a reduction in the
12 minimum blade tip clearance, in Condition 27 of the Site Certificate, from 41 meters above
13 ground to 20 meters above ground. If the extension of the construction deadlines is approved,
14 the amendment would extend the deadline for beginning construction from September 14,
15 2013 to September 14, 2015, and the deadline for completing construction from September 14,
16 2016 to September 14, 2018.

17
18 The certificate holder requests a reduction in the minimum blade tip clearance because many
19 turbines within the range of turbine types authorized in the Site Certificate have a blade tip
20 clearance of less than 41 meters. The majority of the turbines on the market in 2013 have a
21 blade tip clearance between 20 and 40 meters, including the latest version of the Vestas 3.0
22 MW turbine.

23
24 In addition, the transferee, requests a transfer of the resulting amended site certificate from
25 Montague to PGE, effective at closing of the sale of the Facility to PGE. However, should closing
26 not occur due to unforeseen circumstances and a transfer of the site certificate is no longer
27 needed, Montague nonetheless requests Council approval of the extension of the construction
28 deadline and the reduction in the minimum blade tip clearance.

29 30 **II.A.2. Certificate Holder's Proposed Changes to Site Certificate**

31
32 Certificate holder submitted a red-line version of the Site Certificate detailing the certificate
33 holder's proposed changes in its Request for Amendment dated December 28, 2012.

34 35 **II.A.3. Council's Recommended Changes to the Site Certificate**

36
37 The Council adopts the certificate holder's proposed changes, subject to additional
38 modification. The amended site certificate is presented in Attachment A. New text is shown
39 with underline with deletions shown with strikethrough.

1 **II.B. Procedural History**

2
3 As described above, on September 10, 2010, the Council issued the Site Certificate to
4 Montague. This amendment request represents the first amendment.
5

6 On December 28, 2012, Montague and PGE jointly submitted a "Request for Amendment No. 1
7 to the Site Certificate for Montague Wind Power Facility." On January 09, 2013, Montague and
8 PGE sent copies of the amendment request to a list of reviewing agencies provided by the
9 Department with an attached memorandum from the Department requesting agency
10 comments by February 11, 2013. On January 11, 2013 the Department sent notice of the
11 amendment request to all persons on the Council's mailing list, to the special list established for
12 the facility and to an updated list of property owners supplied by Montague, again requesting
13 comment by February 11, 2013. Public and Agency comments on the amendment request are
14 summarized in the following sections, and, as applicable to Council standards, are discussed in
15 Section III of this Proposed Order.
16

17 By email, on January 11, 2013, the Department notified Montague and PGE that the Proposed
18 Order would be issued no later than April 12, 2013.
19

20 ODOE issued the proposed order on April 10, 2013 recommending approval of amendment 1
21 and transfer. On the same day, ODOE issued notice of the proposed order in accordance with
22 OAR 345-027-0070, specifying May 10, 2013 as the deadline for public comments and requests
23 for a contested case on the proposed order. ODOE also posted notice on the agency website,
24 along with the proposed order.
25

26 EFSC held an informational hearing on the transfer request at the May 03, 2013, public meeting
27 in Hermiston, Oregon, and considered the proposed order at a public meeting in Portland,
28 Oregon on June 21, 2013.
29

30 **II.C. Reviewing Agency Comments on the Request for Amendment 1**

31 **Oregon Department of Fish and Wildlife (ODFW)**

32 ODFW recommended that PGE complete Washington Ground Squirrel surveys prior to
33 construction of the project and recommended the addition of a condition in the Site Certificate
34 requiring the site certificate holder to complete an updated raptor nest survey prior to
35 construction. The certificate holder responded to the ODFW comments explaining that the
36 amendment had no impact on Condition 94 and 95 of the site certificate.² The Department's
37 assessment of wildlife impacts and surveys is discussed below in Section III.A.9. and III.A.10.
38
39

40 **Oregon Water Resources Department (OWRD)**

² Email from Sara Parsons, February 11, 2013.

1 OWRD noted that any water used for construction or operation of the project would need to be
2 obtained through a municipal entity with existing rights, or else limited licenses will be required
3 for the authorized use of water for construction and operational uses. The Department's
4 assessment of necessary permits and water rights is discussed below in Section III.

5
6 Oregon Department of State Lands (DSL)

7 DSL determined that there will be no change to the impacts of "waters of the state."

8
9 Oregon Department of Environmental Quality (ODEQ)

10 ODEQ reviewed the proposed amendment and had no substantive comment on the requests.

11
12 Oregon Department of Transportation (ODOT)

13 ODOT reviewed the proposed amendment and had no comment.

14
15 Morrow County

16 Morrow County stated its support for the need to request a construction continuance and
17 thinks PGE's purchase of MWP is a desirable outcome.

18
19 **II.D. Public Comments on the Request for Amendment 1**

20
21 Irene Gilbert

22 Ms. Gilbert submitted comments on the request and within her comments included a Request
23 for a Contested Case.³ Ms. Gilbert's comments can be summarized as follows: (1) currently
24 available information has not been provided by the applicant, including the latest wildlife
25 survey information; (2) the Gilliam County Zoning Ordinance (GCZO) rules are applicable to the
26 amendment request and must be applied; (3) applicant must provide information which
27 identifies the numbers and birds and bats which travel between 20 and 41 meters and establish
28 a credible analysis of potential wildlife impacts; (4) impacts of low frequency or inaudible sound
29 on human health needs to be addressed; and (5) setbacks from Washington Ground Squirrels,
30 Raptor Nests, Burrowing Owls and other species of concern need to be specifically identified
31 and enforced. To respond to Ms. Gilbert's comments, Montague and PGE submitted a joint
32 response addressing each of Ms. Gilbert's statements.⁴ As applicable, the Department
33 addresses wildlife impacts and survey requirements in Sections III.A.9 and III.A.10, land use
34 criteria in Section III.A.6. and noise requirements and impacts in Section III.B.1.

35
36 **II.E. Reviewing Agency Comments on the Proposed Order**

37

³ Under OAR 345-027-0070(6), the contested case request was premature. A request for a contested case must be based upon the Proposed Order. Ms. Gilbert was notified and made aware that if she determines a need to request a contested case, she must submit that request after the issuance of the Proposed Order.

⁴ Montague Amendment #1, Joint Iberdrola and OGE Response to Comments on Notice of RFA and Transfer (March 1, 2013).

1 The Department did not receive any substantive comments from any reviewing agency on the
2 Proposed Order.

3 4 II.F. Public Comments on the Proposed Order

5 6 Joe and Donna Reitmann-JDR Farms

7 The Reitmann's submitted a comment offering support of the Montague Amendment Request
8 and Transfer. As landowners, the Reitmann's noted the current economic conditions require
9 additional time to develop energy projects, and that the change in blade clearance could allow
10 for a more efficient machine design. Additionally, the Reitmann's expressed support of the
11 transfer to Portland General Electric, describing it as a win win situation for PGE ratepayers and
12 all citizens of Oregon.

13 14 Marion Weatherford

15 Ms. Weatherford expressed support for the project and cited many of the benefits wind energy
16 development has on rural areas, including Gilliam County. Ms. Weatherford urged EFSC to grant
17 the amendment and transfer.

18 19 Honorable Steve Shaffer

20 Judge Shaffer submitted comment letter expressing support for the amendment and transfer
21 and urging EFSC to grant both.

22 23 Jan Foglesong

24 Ms. Foglesong urged EFSC to approve both the amendment and transfer and cited a recent
25 OpEd article regarding the benefits of wind energy in Gilliam County.

26 27 II.G. Applicable Standards

28
29 Under ORS 469.405, "a site certificate may be amended with the approval of the Energy Facility
30 Siting Council." The Council has adopted rules for determining when a site certificate
31 amendment is necessary (OAR 345-027-0030 and -0050) and rules setting out the procedure for
32 amending or transferring a site certificate (OAR 345-027-0060 -0070 and -0100). The proposed
33 amendments and transfer are required under the current rules. Consistent with OAR 345-027-
34 0100(12), the Council may act concurrently on a request to transfer a site certificate and any
35 other amendment request. However, the Council must follow the procedures described in OAR
36 345-027-0100 for the transfer request, the procedures described in OAR 345-027-0030 and
37 345-027-0070 for the extension of the construction deadline and the procedures described in
38 OAR 345-027-0060 and -0070 for any other amendment.

39 40 III.G.1. When an Amendment is Required

41 OAR 345-027-0030 addresses "Amendments to Extend Construction Beginning and Completion
42 Deadlines." Under OAR 345-027-0030, a site certificate holder may request an amendment to
43 extend the deadlines for beginning or completing the construction of a facility. The certificate

holder must submit the request “no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline.” If the Council grants such a request, the Council must specify a new deadline for beginning or completing construction that are not more than two years from the current deadlines. Montague submitted a timely request to extend the construction deadlines as required under OAR 345-027-0030 as Montague submitted its request on December 28, 2012.

In addition to OAR 345-027-0030, an amendment is necessary under OAR 345-027-0050 when the certificate holder proposes to design, construct, or operate a facility in a manner different from the description in the site certificate and the proposed change could (a) result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards; (b) could impair the certificate holder’s ability to comply with a site certificate condition; or (c) could require a new condition or a change to a condition in the site certificate. Use of turbine types authorized in the Site Certificate, could conflict with Montague’s ability to comply with Condition 27 of the Site Certificate, therefore, Montague must also seek an amendment under OAR 345-027-0050.

Compliance with the applicable Council standards are discussed in Section III below.

II.G.2. Transfer of a Site Certificate

OAR 345-027-0100 describes the procedures and process for transferring a site certificate. Under OAR 345-027-0100(1)(a) a transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility. As described in PGE’s 2009 Integrated Resource Plan, PGE is seeking to acquire approximately 101 MWa, of mid-to-long-term renewable energy supply, bundled with their associated renewable energy credits, to be available beginning in the 2013-2017 timeframe. PGE and Montague entered into an Asset Purchase Agreement for (1) the ownership and development rights and the Facility’s Site Certificate and (2) PGE and Leaning Juniper Wind Power II, LLC entered into an APA for the ownership rights and site certificate for the 111 MW Leaning Juniper IIB project. Iberdrola Renewables, LLC is the parent company of Leaning Juniper Wind Power II, LLC. In accordance with PGE’s Request for Proposal dated October 1, 2012, PGE and Iberdrola Renewables, LLC jointly prepared and submitted a “Benchmark Bid” consisting of the Facility along with the LJIB facility. Pursuant to the APAs, if PGE and Iberdrola’s Benchmark Bid is selected, PGE will acquire the rights, title and interests in both the Facility and the LJIB facility upon closing. Therefore, pursuant to OAR 345-027-0100(1)(a), a transfer of the site certificate is required because, provided closing occurs, PGE will have the legal right to possession of the Facility but not the authority under the Site Certificate to construct, operate or retire the Facility.

1 To request a transfer, a transferee must submit a written request to the Department that
2 includes the information described in OAR 345-021-0010(1)(a), (d), (f) and (m), a certification
3 that the transferee agrees to abide by all terms and conditions of the site certificate currently in
4 effect and, if known, the date of the transfer of ownership. Additionally, the Council must hold
5 a public informational hearing during a Council meeting before acting on the transfer request.
6 To approve the transfer, the Council must find that the transferee complies with the standards
7 described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1),⁵
8 and that the transferee is or will be lawfully entitled to possession or control of the site or the
9 facility described in the site certificate.⁶ As described in more detail below, PGE, as the
10 transferee, joined Montague in filing the amendment request provided the necessary
11 information and demonstrated how PGE complies with the applicable Council standards.

12 13 **III. REVIEW OF THE PROPOSED AMENDMENT AND TRANSFER**

14 15 **III.A. Review of the Proposed Amendments**

16
17 In accordance with OAR 345-027-0030(1), the certificate holder submitted its request to extend
18 the deadlines for construction start and completion more than six months before the
19 deadline(s). Under the current site certificate, the deadline to begin construction, as stated
20 within Condition 24, is "within three years after the effective date of the site certification," or
21 September 14, 2013. Condition 25 of the Site Certificate requires construction completion
22 within six years after the effective date of the site certificate, or September 14, 2016. The site
23 certificate holder submitted its request for extension on December 28, 2012. Therefore, the
24 Council finds that the request to extend construction deadlines was timely filed. This is the site
25 certificate holder's first request to extend the construction deadlines.

26
27 In making its decision on the extension request, OAR 345-027-0070(10)(b) establishes the
28 Council's scope of review. The Council must consider (1) whether the Council has previously
29 granted an extension of the deadline; (2) whether there has been any change of circumstances
30 that affects a previous Council finding that was required for issuance of a site certificate or
31 amended site certificate; and (3) whether the facility complies with all Council standards. The
32 Facility's compliance with Council standards and the considerations of OAR 345-027-
33 0070(10)(b) are discussed below.

34
35 Further, the certificate holder requests a change to Condition 27(d) of the Site Certificate to
36 reduce the minimum blade tip clearance from 41 meters above ground to 20 meters above
37 ground. Therefore, the amendment is necessary under OAR 345-027-0050(c) as the certificate
38 holder, proposes to construct the facility in a manner different from the description in the site
39 certificate, and the proposed amendment requires new conditions or modifications to current

⁵ OAR 345-022-0010 is the Organizational Expertise Standard, OAR 345-022-0050 is the Retirement and Financial Assurance Standard, and OAR 345-024-0710(1) is the Monetary Path Payment Requirement applicable to the Carbon Dioxide Emissions Standard.

⁶ OAR 345-027-0100(8).

1 conditions in the site certificate. If the certificate holder constructed the facility using any
2 turbine size authorized in the Site Certificate, it may not be able to comply with Condition
3 27(d). In making its decision on this amendment request, OAR 345-027-0070(10)(c) establishes
4 the Council's scope of review and the Council shall consider whether reducing the minimum
5 blade tip clearance affects any finding made by the Council in an earlier order.

6
7 Additionally, for both the extension of the construction deadlines and the reduction in blade tip
8 clearance, the Council must consider whether the amount of the bond or letter of credit
9 required under OAR 345-022-0050 is adequate (OAR 345-027-0070(10)(d)).

10 11 III.A.1 Energy Facility Siting Standards

12
13 The Council must decide whether the requested amendments comply with the facility siting
14 standards adopted by the Council. In addition, the Council must impose conditions for the
15 protection of the public health and safety, conditions for the time of commencement and
16 completion of construction, and conditions to ensure compliance with standards, statutes and
17 rules.⁷

18
19 The Council is not authorized to determine compliance with regulatory programs that have
20 been delegated to another state agency by the federal government.⁸ Nevertheless, the Council
21 may consider these programs in the context of its own standards to ensure public health and
22 safety, resource efficiency and protection of the environment.

23
24 The Council has no jurisdiction over design or operational issues that do not relate to siting,
25 such as matters relating to employee health and safety, building code compliance, wage and
26 hour or other labor regulations, or local government fees and charges.⁹

27
28 In making its decision on an amendment of a site certificate, the Council applies the applicable
29 state statutes, administrative rules and local government ordinances that are in effect on the
30 date the Council makes its decision, except when applying the Land Use Standard. In making
31 findings on the Land Use Standard, the Council applies the applicable substantive criteria in
32 effect on the date the certificate holder submitted the request for amendment.¹⁰

33 34 III.A.2. General Standard of Review: OAR 345-022-0000

35
36 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*
37 *Council shall determine that the preponderance of evidence on the record supports the*
38 *following conclusions:*

⁷ ORS 469.401(2)

⁸ ORS 469.503(3)

⁹ ORS 469.401(4)

¹⁰ OAR 345-027-0070(10).

1 (a) The facility complies with the requirements of the Oregon Energy Facility
2 Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the
3 standards adopted by the Council pursuant to ORS 469.501 or the overall public
4 benefits of the facility outweigh the damage to the resources protected by the
5 standards the facility does not meet as described in section (2);
6

7 (b) Except as provided in OAR 345-022-0030 for land use compliance and except
8 for those statutes and rules for which the decision on compliance has been
9 delegated by the federal government to a state agency other than the Council,
10 the facility complies with all other Oregon statutes and administrative rules
11 identified in the project order, as amended, as applicable to the issuance of a site
12 certificate for the proposed facility. If the Council finds that applicable Oregon
13 statutes and rules, other than those involving federally delegated programs,
14 would impose conflicting requirements, the Council shall resolve the conflict
15 consistent with the public interest. In resolving the conflict, the Council cannot
16 waive any applicable state statute.

17 * * *

18 The requirements of OAR 345-022-0000 are addressed in the findings of fact and conclusions of
19 law in the sections that follow. Upon consideration of all of the evidence on the record,
20 recommendation of approval is submitted.
21

22 III.A.3. Organizational Expertise: OAR 345-022-0010
23

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

36 (2) The Council may base its findings under section (1) on a rebuttable presumption that
37 an applicant has organizational, managerial and technical expertise, if the applicant has
38 an ISO 9000 or ISO 14000 certified program and proposes to design, construct and
39 operate the facility according to that program.
40

41 (3) If the applicant does not itself obtain a state or local government permit or approval
42 for which the Council would ordinarily determine compliance but instead relies on a

1 permit or approval issued to a third party, the Council, to issue a site certificate, must
2 find that the third party has, or has a reasonable likelihood of obtaining, the necessary
3 permit or approval, and that the applicant has, or has a reasonable likelihood of entering
4 into, a contractual or other arrangement with the third party for access to the resource
5 or service secured by that permit or approval.
6

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

15 **Findings of Fact**

16

17 Subsections (1) and (2) of the Council's Organizational Expertise Standard require that the
18 certificate holder demonstrate the ability to design, construct, and operate the facility in
19 compliance with Council standards and all site certificate conditions, as well as to restore the
20 site to a useful, non-hazardous condition. Subsections (3) and (4) address third-party permits,
21 those permits which the certificate holder relies on a contractor or other third party to obtain.
22

23 The current site certificate holder is Montague Wind Power Facility, LLC, a wholly-owned
24 subsidiary of Iberdrola Renewables, LLC. In the *Final Order on the Application*, the Council found
25 Iberdrola, or its wholly owned subsidiaries, to have the organizational expertise to construct,
26 operate and retire energy facilities.¹¹ The Council found that Montague had specific qualified
27 and experienced internal personnel for management and design, construction and operation of
28 the proposed facility as well as would hire only qualified contractors with direct experience in
29 wind energy facility construction to design and build the proposed facility.¹² Therefore, the
30 Council found that the certificate holder satisfied the Council's Organizational Expertise
31 Standard. The Council's previous findings and conclusions are incorporated by this reference.
32

33 The amendments proposed do not affect the current certificate holder's organizational
34 expertise, or impact the Council's previous findings. There has not been a change of
35 circumstance affecting the certificate holder's qualifications.
36

37 With regard to third-party permits, in the *Final Order on the Application*, the Council found that
38 the applicable third parties either have the necessary permits or have a reasonable likelihood of
39 obtaining the necessary permits. Considering Iberdrola's experience in successfully developing
40 other wind energy projects in Oregon, the Council determined that the certificate holder had a

¹¹ *Final Order on the Application* at 14-15.

¹² *Id.*

1 reasonable likelihood of entering into a contractual or other arrangement with third parties for
2 access to the resources secured by the third-party permits. The Council's previous findings are
3 incorporated by this reference. The Council adopted Condition 29 requiring the certificate
4 holder to provide confirmation that the third parties have obtained the necessary permits and
5 that the certificate holder has a contract or other arrangement with third parties for access to
6 the resources secured by the permits.¹³ The proposed amendments do not affect the Council's
7 previous findings, and the certificate holder remains subject to Condition 29, should this
8 amendment be approved.

9
10 **Conclusion**

11 Based on the findings discussed above, the Council finds that Montague satisfies the Council's
12 Organizational Expertise standard.

13
14 **III.A.4. Structural Standard: OAR 345-022-0020**

15
16 *(1) Except for facilities described in sections (2) and (3) to issue a site certificate, the*
17 *Council must find that:*

18
19 *(a) The applicant, through appropriate site-specific study, has adequately*
20 *characterized the site as to the Maximum Considered Earthquake Ground Motion as*
21 *shown for the site in the 2009 International Building Code and maximum probable*
22 *ground motion, taking into account ground failure and amplification for the site*
23 *specific soil profile under the maximum credible and maximum probable seismic*
24 *events; and*

25
26 *(b) The applicant can design, engineer, and construct the facility to avoid dangers to*
27 *human safety presented by seismic hazards affecting the site that are expected to*
28 *result from maximum probable ground motion events. As used in this rule "seismic*
29 *hazard" includes ground shaking, ground failure, landslide, liquefaction, lateral*
30 *spreading, tsunami inundation, fault displacement, and subsidence;*

31
32 *(c) The applicant, through appropriate site-specific study, has adequately*
33 *characterized the potential geological and soils hazards of the site and its vicinity*
34 *that could, in the absence of a seismic event, adversely affect, or be aggravated by,*
35 *the construction and operation of the proposed facility; and*

36
37 *(d) The applicant can design, engineer and construct the facility to avoid dangers to*
38 *human safety presented by the hazards identified in subsection (c).*
39 *The Council may issue a site certificate for a facility that would produce power from*
40 *wind, solar or geothermal energy without making the findings described in section*

¹³ *Id.* at 16.

1 (1). However, the Council may apply the requirements of section (1) to impose
2 conditions on a site certificate issued for such a facility.*****
3

4 **Findings of Fact**

5

6 Pursuant to OAR 345-022-0020(2), the Council may issue a site certificate without making
7 findings with respect to the Structural Standard; however the the Council may impose site
8 certificate conditions based upon the requirements of the standard.
9

10 In the *Final Order on the Application*, the Council adopted Condition 12, 13, 14, 52, 53 and 54 in
11 the Site Certificate to address the potential for seismic and non-seismic geological hazards at
12 the facility site.¹⁴ The Council's previous findings are incorporated by this reference.
13 The amendment request seeks to extend the construction deadline and reduce the minimum
14 blade tip clearance; the amendment, as proposed, would not impact the Council's earlier
15 findings. The amendment would not result in the placement of facility components within
16 geologic areas that have not been addressed by the Council. The Council finds that the
17 conditions in the Final Order are sufficient to demonstrate compliance with the structural
18 standard and no additional changes are necessary.
19

20 **Conclusion**

21

22 The Council concludes that the Facility, as amended, complies with the Council's Structural
23 Standard.
24

25 **III.A.5. Soil Protection: OAR 345-022-0022**

26

27 *To issue a site certificate, the Council must find that the design, construction and operation of*
28 *the facility, taking into account mitigation, are not likely to result in a significant adverse impact*
29 *to soils including, but not limited to, erosion and chemical factors such as salt deposition from*
30 *cooling towers, land application of liquid effluent, and chemical spills.*
31

32 **Findings of Fact**

33

34 The Soil Protection Standard requires the Council to find that the design, construction and
35 operation of the facility are not likely to result in significant adverse impacts to soil.

¹⁴ Conditions 12, 13 and 14 in the site certificate are mandatory conditions regarding geotechnical investigation and protection of the public from seismic hazards; Conditions 52 requires the certificate holder to perform appropriate site-specific geotechnical investigations before beginning construction to evaluate the subsurface and foundation support characteristics at the locations of the turbine towers and other significant Facility structures. Condition 53 requires the certificate holder to design all components of the Facility to meet or exceed the minimum standards required by the Oregon Structural Specialty Code and the 2006 International Building Code. Condition 54 requires the certificate holder to design and build the Facility to avoid dangers to human safety presented by non-seismic hazards.

1 In the *Final Order on the Application*, the Council found that the design, construction, and
2 operation of the Facility would not result in a significant adverse impact to soils. To control and
3 mitigate potential adverse impact to soils and to mitigate the risk of soil contamination during
4 construction and operation the Council adopted specific site certificate conditions.¹⁵ The
5 Council's previous findings are incorporated by this reference.¹⁶

7 The proposed amendment seeks to (1) extend the construction start and completion deadlines;
8 and (2) reduce the minimum blade tip clearance in Condition 27 from 41 meters above ground
9 to 20 meters above ground. The proposed changes would not result in any soil impacts that
10 have not been addressed by the Council or affect the Facility's compliance with the Soil
11 Protection Standard. The proposed amendment would not result in any additional soil impacts.
12 The certificate holder will remain subject to the conditions included in the Facility's Site
13 Certificate. The Council finds that no changes to the site certificate conditions related to soil
14 protection are necessary.

16 The Council finds that the design, construction and operation of the Facility would not likely
17 result in significant adverse impacts to soils, taking into account mitigation required by the site
18 certificate conditions.

20 Conclusion

22 Based on the findings above, the Council finds that the Facility, as amended, complies with the
23 Council's Soil Protection Standard.

25 III.A.6. Land Use: OAR 345-022-0030

27 *(1) To issue a site certificate, the Council must find that the proposed facility complies*
28 *with the statewide planning goals adopted by the Land Conservation and Development*
29 *Commission.*

31 *(2) The Council shall find that a proposed facility complies with section (1) if:*

33 *(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a)*
34 *and the Council finds that the facility has received local land use approval under the*
35 *acknowledged comprehensive plan and land use regulations of the affected local*
36 *government; or*

38 *(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b)*
39 *and the Council determines that:*

¹⁵ Montague Wind Power Facility Site Certificate-Condition 80, 85, 81, 82, 92, 44, 55, 38, 56

¹⁶ *Final Order on the Application* at 60.

1 (A) The proposed facility complies with applicable substantive criteria as
2 described in section (3) and the facility complies with any Land Conservation and
3 Development Commission administrative rules and goals and any land use
4 statutes directly applicable to the facility under ORS 197.646(3);

5
6 (B) For a proposed facility that does not comply with one or more of the
7 applicable substantive criteria as described in section (3), the facility otherwise
8 complies with the statewide planning goals or an exception to any applicable
9 statewide planning goal is justified under section (4); or

10
11 (C) For a proposed facility that the Council decides, under sections (3) or (6), to
12 evaluate against the statewide planning goals, the proposed facility complies
13 with the applicable statewide planning goals or that an exception to any
14 applicable statewide planning goal is justified under section (4).

15 *****

16 **Findings of Fact**

17
18 The Land Use Standard requires the Council to find that a proposed facility complies with the
19 statewide planning goals adopted by the Land Conservation and Development Commission
20 (LCDC). The Council must apply the Land Use Standard in conformance with the requirements
21 of ORS 469.504. In *Save Our Rural Oregon*, the Oregon Supreme Court has held “under ORS
22 469.504(1)(b) and (5), the Council may choose to determine compliance with statewide
23 planning goals by evaluating a facility under paragraph (A) or (B) or (C), but...it may not combine
24 elements or methods from more than one subparagraph, except to the extent that the chosen
25 subparagraph itself permit.”

26
27 The Council may find compliance with statewide planning goals under ORS 469.504(1)(b)(A) if
28 the Council finds that the proposed facility “complies with applicable substantive criteria from
29 the affected local government’s acknowledged comprehensive plan and land use regulations
30 that are required by the statewide planning goals and in effect on the date the application is
31 submitted.” Under ORS 469.504(1)(b)(B) the Council must determine whether the proposed
32 facility “otherwise [complies] with the applicable statewide planning goals.” In *Save Our Rural*
33 *Oregon*, the Oregon Supreme Court held that “paragraph (B) necessarily requires an evaluation
34 of the same applicable substantive criteria as paragraph (A) and, to the extent those criteria are
35 not met, directs the council to consider statewide planning goals.” However, the Council may
36 not evaluate a proposed facility under both subparagraph (A) and subparagraph (B).

37
38 Under ORS 469.504(5), the council must apply the applicable substantive criteria recommended
39 by the Special Advisory Group (SAG). Gilliam County is the affected local government, and as

1 such, the Council appointed Gilliam County Court, the Gilliam County governing body, as the
2 SAG for both the original Site Certificate application and this amendment review.¹⁷

3
4 In the *Final Order on the Application*, the Council determined the following as applicable
5 substantive criteria: Gilliam County Zoning Ordinance (GCZO) Sections 4.020(A), 4.020(D)(14),
6 4.020(D)(29), 4.020(D)(34), 4.020(H), 4.020(J), 7.010 and 7.020(T).¹⁸ The Council found that
7 Facility complied with the applicable substantive criteria, except for GCZO Section 4.020(D)(14),
8 which limited the area that a power generation facility could occupy in an Exclusive Farm Use
9 Zone.¹⁹ Therefore, in accordance with ORS 469.504(1)(b)(B), the Council reviewed the Facility to
10 determine compliance with the applicable statewide planning goals. The Council determined
11 that the applicable statewide planning goal was Goal 3, and concluded that if the then current
12 LCDC rules applied, the Facility was in compliance with Goal 3; however, if the old LCDC rules
13 applied the Facility was not in compliance.^{20, 21} Nevertheless, the Council found that an
14 exception to Goal 3 was justified under ORS 469.504(2)(c). Based on its findings, the Council
15 concluded that the Facility complied with the Land Use Standard.²²

16
17 In considering this amendment request, pursuant to OAR 345-027-0070(10), the Council must
18 apply the applicable substantive criteria in effect on the date the certificate holder submits a
19 request for amendment. On December 20, 2012, the Department sent the Gilliam County Court
20 a letter explaining its appointment as a SAG for the Facility and a description of the SAGs role in
21 the amendment review process. The letter included and highlighted the SAG's responsibility to
22 submit applicable substantive criteria as requested by the Department. On January 11, 2013,
23 the Department sent out a Memo to Reviewing Agencies, including Gilliam County Court,
24 requesting comment and input on the amendment request by February 11, 2013. Gilliam
25 County Court did not submit comment or its recommendation for applicable substantive
26 criteria by the February 11, 2013 deadline but on March 27, 2013, the Department received a
27 letter confirming that the SAG had adopted the Gilliam County Planning Director's

¹⁷ EFSC, In the Matter of the Request for Amendment 1 for the Montague Wind Power Facility, Order Appointing a Special Advisory Group (Dec. 07, 2012).

¹⁸ Letters from Susie Anderson, Gilliam County Planning Director, February 26 and March 8, 2010.

¹⁹ *Final Order on the Application* at 26, 43.

²⁰ OAR Chapter 660, Division 33, contains the LCDC administrative rules for implementing the requirements for agricultural land as defined by Goal 3. The current rules include amendments that became effective on January 2, 2009. Under the current rules, a wind power generation facility is a distinct type "R" use ("use may be approved, after required review") listed in OAR 660-033-0120 (Table 1). The standards contained in OAR 660-033-0130(5) and (37) apply to wind power generation facilities. Prior to the amendment of OAR 660-033-0120 and OAR 660-033-0130, a wind energy facility would be analyzed as a "commercial utility facility for the purpose of generating power for public use by sale." OAR 660-033-0120 (Table 1) defined this use as a type "R" use and referenced applicable standards in OAR 660-033-0130. The standards found in OAR 660-033-0130(5) and (22) applied if the proposed facility was located on non-high-value farmland and OAR 660-033-0130(5) and (17) applied if the proposed facility was located on high-value farmland. Therefore, the Council found that Montague did not comply with OAR 660-033-0130(22) because the facility occupied more than 20 acres of non-high-value farmland.

²¹ As of the date the application for site certificate was submitted, Gilliam County had not yet incorporated the amendments to OAR 660-033-0120 and OAR 660-033-0130 into the local zoning ordinance.

²² *Final Order on the Application* at 57.

1 recommendation contained in a December 4, 2012 letter to Sara Parsons regarding the
2 applicability of the amended GCZO to permitted wind facilities.²³

3
4 Under ORS 469.504(5), the SAG must recommend to the Council the applicable substantive
5 criteria within the time stated in the request, and if the SAG does not recommend applicable
6 substantive criteria within the time established in the Department's request, the Council may
7 either make its own determination of the applicable substantive criteria or choose to evaluate
8 the Facility against the statewide planning goals. Accordingly, because the SAG did not submit a
9 timely recommendation of applicable substantive criteria on or before February 11, 2013, and
10 because the Gilliam County Planning Director's December 4, 2012 letter does not serve as the
11 SAG recommendation under statute, the Council chooses to determine the applicable
12 substantive criteria.

13
14 In October 2011, Gilliam County Court adopted amendments to the Gilliam County
15 Comprehensive Plan and Land Development Ordinance (GCZO), adopting revised and new
16 standards for wind energy facilities including the amendments to OAR 660-033-0120 and 660-
17 033-0130. The Council applies the standards and criteria from the amended GCZO when
18 reviewing this amendment request.²⁴ The Council determines the following as applicable
19 substantive criteria: GCZO Sections 4.020(A), 4.020(D)(16), 4.020(D)(20), 4.020(H), 4.020(J),
20 7.010 and 7.020(T).

21 22 (1) Applicable Substantive Criteria

23 24 GCZO Section 4.020(A): EFU Exclusive Farm Use

25 In an EFU Zone, the following regulations shall apply:

26
27 *A. High Value Farmland. Due to the limited amount of High Value Farmland in*
28 *Gilliam County, the uses for High Value Farmland are not listed in this section. If a*
29 *use permitted in Subsections B-G of this section is located on High Value Farmland,*

²³ Letter from Susie Anderson, Gilliam County Planning Director, to Sara Parsons, Iberdrola Renewables, Inc (Dec. 4, 2012). Letter from Susie Anderson, Gilliam County Planning Director to Andrea Goodwin, Oregon Department of Energy (Mar. 27, 2013).

²⁴ In the March 27, 2013 letter, the SAG indicated that the amended GCZO did not apply to projects that were permitted either through the EFSC process or the local CUP process prior to October 2011. Therefore, Gilliam County suggested that the 'applicable substantive criteria' that should be applied to the amendment request were the criteria that applied in the *Final Order on the Application*, i.e. the old zoning ordinance. The plain language of the amended ordinance does not reflect this intention. Moreover, 'applicable substantive criteria,' as defined in statute and rule, are those criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and *that are in effect on the date the applicant submits the amendment* request to ODOE, which in this case was December 28, 2012. Therefore, the Department determines it must use the current (amended) zoning ordinance. See ORS 469.504(1)(b)(A); ORS 469.504(5); OAR 345-022-0030(3); OAR 345-027-0070(10). Montague maintains that the amended GCZO does not apply to the amendment request for the reasons set forth in Section 4.1 Land Use Standard of the Montague Request for Amendment. Nonetheless, Montague voluntarily demonstrated the Facility's compliance, without waiving its position and right to argue in the future the applicability of the amended GCZO.

1 the requirements of this section and the requirements of OAR 660, Division 33, shall
2 be used for the review.

3
4 The Council finds that the facility is a use permitted in Subsections B-G because the facility is
5 permitted under GCZO Section 4.020(D).

6
7
8 The GCZO does not define “high-value farmland.” ORS 215.710(1) and OAR 660-033-0020(8),
9 however, define “High Value Farmland” as land “in a tract composed predominantly of soils
10 that are... [either irrigated or not irrigated and] classified prime, unique, Class I or II” by the
11 Natural Resources Conservation Service (NRCS).²⁵ “Tract” means one or more contiguous lots or
12 parcels in the same ownership.²⁶ OAR 660-033-0020(1)(a)(A) defines “agricultural land” as land
13 in NRCS soil capability classes I-VI in Eastern Oregon. Class VII soils have very severe limitations
14 that make them unsuitable for cultivation; Class VIII soils have limitations that nearly preclude
15 their use for commercial crop production.²⁷ The definition of “agricultural land” nevertheless
16 provides that land in capability classes other than I-VI “that is adjacent to or intermingled with”
17 lands in classes I-VI “within a farm unit” shall be inventoried as agricultural land.²⁸ The Council
18 has previously found that Class VII and Class VIII soils should be inventoried as agricultural
19 land.²⁹

20
21 In the original ASC, the certificate holder provided information about soil types in Exhibit I and
22 calculated the areas of high-value farmland in Exhibit K.³⁰ Some parts of the Facility would be
23 located on high-value farmland. However, most of the Facility would be located on non-high-
24 value farmland, and the Facility would preclude more than 20 acres of non-high-value farmland
25 from use as a commercial agricultural enterprise. As previously discussed, the ‘applicable
26 substantive criteria’ has changed due to the amendment of the Gilliam County comprehensive
27 plan and land use ordinances. Under the old zoning ordinance, GCZO Section 4.020(D)(14) was
28 considered ‘applicable substantive criteria.’ GCZO Section 4.020(D)(14) addressed “Commercial
29 Utility Facilities for the Purpose of Generating Power for Public Use by Sale.” This section
30 required that a power generation facility not located on high-value not preclude more than 20
31 acres from use as a commercial agricultural enterprise. Therefore, under the old ordinance, the
32 Facility did not comply with this criterion as the facility did preclude more than 20 acres of non-
33 high-value farmland. The requested amendments would not alter the previously calculated
34 areas of high-value farmland as the amendment does not seek to expand the site boundary or
35 change the primary use. Nevertheless, under the new GCZO, wind power generating facilities
36 are excepted from this requirement, and the facility is no longer in non-compliance. See GCZO

²⁵ ORS 215.710(6) provides that the applicable “soil classes, soil ratings or other soil designations” are those of the NRCS “in its most recent publication for that class, rating or designation before November 4, 1993.”

²⁶ OAR 660-033-0020(10).

²⁷ NRCS, Soil Survey Report of Gilliam County, Oregon (May 1984), “Capability Classes and Subclasses.”

²⁸ OAR 660-033-0020(1)(b).

²⁹ *Final Order on Amendment #1 for the Leaning Juniper II Wind Power Facility* (November 20, 2009), p. 22.

³⁰ Detailed soil survey maps identify all of the soils within the site boundary (App, Exhibit I, Figures I-2a through I-2d). Soil classes are identified in Figures K-6 and K-7a through K-7d (App, Exhibit K).

1 Section 4.020(D)(11). Additional provisions of Section 4.020(D) are applicable as discussed
2 below.

3
4 **GCZO Section 4.020(D): Conditional Uses Permitted**

5
6 *In an EFU Zone, the following regulations shall apply:*

7 * * *

8 *D. Conditional Uses Permitted. In the EFU Zone, the following uses and their*
9 *accessory uses may be permitted, either by a Type I or a Type II Conditional Use*
10 *Permit to satisfy the applicable criteria and procedures set forth in Section 7.010. The*
11 *appropriate review criteria are identified for each use.*

12 * * *

13 *(16) Utility facility necessary for public service subject to the provisions of ORS*
14 *215.275 and OAR 660-033-0130(6). No local legislative criteria shall be applied*
15 *for consideration of establishing a utility facility necessary for public service.*

16 *****

17 The proposed 230-kV transmission line that would interconnect the facility with the existing
18 BPA Slatt-Buckley transmission line may be considered a "utility facility necessary for public
19 service."

20
21 *(20) Wind Power Generation Facilities as commercial utility facilities for the*
22 *purpose of generating power for public use by sale.*

23
24 The entire facility, including all related or supporting facilities, may be permitted as a "wind
25 power generation facility" under GCZO Section 4.020(D)(20). GCZO Section 7.020(T), discussed
26 below, contains the County's specific requirements for land use approval of a wind power
27 generation facility.

28
29 **GCZO Section 4.020(H): Specific Review Criteria**

30
31 *H. Specific Review Criteria. In the EFU Zone, certain uses are subject to specific*
32 *criteria, in addition to any other applicable criteria. The specific provisions of this*
33 *subsection apply only when referenced within the list of uses included in Subsections*
34 *4.020.B, C and D.*

35
36 *1. The use may be approved only where the County finds that the use will not:*

37
38 *a. Force a significant change in accepted farm or forest practices on surrounding*
39 *lands devoted to farm or forest use; or*

40
41 *b. Significantly increase the cost of accepted farm or forest practices on*
42 *surrounding lands devoted to farm or forest use.*

1
2 There are approximately 65,844 acres of “surrounding lands” within the analysis area (the area
3 within the site boundary and one-half mile from the site boundary).³¹ Surrounding lands
4 “devoted to farm use” are used for agricultural crop cultivation and animal grazing.³² There is
5 no forest use on surrounding lands. In the *Final Order on the Application*, the Council found that
6 the impacts of the facility would not force a significant change in accepted farm practices or
7 significantly increase the cost of farm practices on surrounding lands. The amendment request
8 would not impact the Council’s previous findings. The proposed amendment would not expand
9 the site boundary or alter the principal use of the land. Therefore, the Council finds that the
10 Facility, as amended, would not force a significant change in accepted farm practices or
11 significantly increase the cost of farm practices on surrounding lands.
12

13 **GCZO Section 4.020(J): Property Development Standards**
14

15 *In an EFU Zone, the following regulations shall apply:*

16 * * *

17 *J. Property Development Standards. In the EFU Zone, the following standards apply*
18 *to residential and nonresidential development.*
19

20 *1. Building Height. No limitations.*
21

22 *2. Setbacks*
23

24 *a. The front and rear yard setbacks from the property line shall be 25 feet.*

25 *b. The side yard setbacks from the property line shall be 25 feet.*
26

27 In the original ASC review, the Gilliam County Planning Director advised the Department that
28 GCZO Section 4.020(J) would apply to the O&M structures only.³³ In the *Final Order on the*
29 *Application*, the Council adopted Condition 42, incorporating the setback requirements of
30 Section 4.020(J). The condition includes a setback for O&M buildings of at least 50 feet from the
31 nearest boundary of the certificate holder’s lease area.
32

33 The amendment as requested would not impact the Council’s previous findings or impact the
34 certificate holder’s ability to comply with the condition. Because the amendment seeks to
35 extend the construction deadlines and reduce the minimum blade tip clearance, the Facility’s
36 compliance with the setback standards would not be impacted. Therefore, the Council finds
37 that the Facility, as amended, would comply with GCZO Section 4.020(J).

³¹ App, Exhibit K, p. 8. The certificate holder did not calculate and exclude the acres of land occupied by roads, farmhouses and other buildings, rock outcrops and washes or that otherwise is not available for farm use. The applicant calculated the total acreage within the analysis area and stated that the predominant uses are farm uses.

³² App, Exhibit K, p. 8.

³³ Letter from Susie Anderson, Gilliam County Planning Director, March 8, 2010.

1 **GCZO Section 7.010(A)(1): General Approval Criteria and Conditions**

2
3 *A conditional use listed in this ordinance shall be permitted, altered or denied in*
4 *accordance with the standards and procedures of this ordinance and this article by*
5 *action of the Planning Commission or Planning Director. In the case of a use existing*
6 *prior to the effective date of this ordinance, and classified in this ordinance as a*
7 *Conditional Use, a change in use or in lot area or an alteration of a Conditional Use, a*
8 *change in use or in lot area or an alteration of structure shall conform with the*
9 *requirements for a Conditional Use.*

10
11 **A. General Approval Criteria and Conditions**

12
13 *1. In addition to criteria, standards and conditions that may be set forth in a specific*
14 *Zone, this Article, or other regulations applicable to a specific Conditional Use shall not*
15 *be approved or permitted unless the following criteria are met. A Conditional Use may*
16 *be approved on the Condition or Conditions that the applicant obtain and maintain*
17 *compliance with other permits and approvals required.*

18
19 *a. The proposed use shall be in compliance with the applicable Comprehensive Plan*
20 *designation and policies.*

21 *****

22
23 GCZO Section 7.010(A)(1) contains a list of criteria that must be met “in addition to the criteria,
24 standards and conditions that may be set forth in a specific Zone, this Article, or other
25 regulations applicable to a specific Conditional Use.” In the *Final Order on the Application*, the
26 Council found that the proposed Facility would comply with Section 7.010(A)(1). The
27 amendment request would not impact the Council’s previous findings. The Facility does not
28 change the site boundary or alter the use, and there is no change in fact or circumstance that
29 affects the Council’s previous finding. Therefore, the Council finds that the Facility, as amended,
30 would comply with GCZO Section 7.010(A)(1).

31
32 **GCZO Section 7.010(A)(2): General Approval Criteria and Conditions**

33
34 *A conditional use listed in this ordinance shall be permitted, altered or denied in*
35 *accordance with the standards and procedures of this ordinance and this article by*
36 *action of the Planning Commission or Planning Director. In the case of a use existing*
37 *prior to the effective date of this ordinance, and classified in this ordinance as a*
38 *Conditional Use, a change in use or in lot area or an alteration of a Conditional Use, a*
39 *change in use or in lot area or an alteration of structure shall conform with the*
40 *requirements for a Conditional Use.*

41
42 **A. General Approval Criteria and Conditions**

1
2 1. * * *

3
4 2. *In addition to specific standards and/or conditions set forth by the applicable zone,*
5 *this article or some other applicable regulations, other conditions may be imposed*
6 *that are determined necessary to avoid a detrimental impact, and to otherwise*
7 *protect the best interests of the surrounding area and the County as a whole. Such*
8 *conditions may include, but are not limited to, the following:*

9
10 a. *Limiting the manner in which the use is conducted including restricting the*
11 *time an activity may take place and restraints to minimize such environmental*
12 *effects as noise, vibration, air pollution, glare and odor.*

13
14 b. *Establishing a special setback or other open space or lot area or dimension.*

15
16 c. *Limiting the height, size or location of a building or other structure.*

17
18 d. *Designating the size, number, improvements, location and nature of vehicle*
19 *access points and parking or loading areas.*

20
21 e. *Limiting or otherwise designating the number, size, location, height, and*
22 *lighting of signs and outdoor lighting.*

23
24 f. *Requiring diking, screening, fencing, landscaping or another facility to protect*
25 *adjacent or nearby property and designating standards for its installation and*
26 *maintenance.*

27
28 g. *Protecting and preserving existing trees, vegetation, water resources, wildlife*
29 *habitat or other significant natural resources.*

30
31 h. *Limiting the term of the Conditional Use Permit to a specific time.*

32
33 i. *Requiring necessary on-site or off-site improvements and maintenance.*

34
35 j. *Requiring the holder of a Conditional Use Permit to obtain review, renewal, or*
36 *reapplication approval of the permit in the event that there is an increase in*
37 *impact from the use on public facilities beyond that which was projected at the*
38 *time of initial approval.*

39 * * * * *³⁴

³⁴ GCZO Section 7.010(A) subsections (3) and (4) are omitted. These subsections address County procedures for termination and review or alteration of Conditional Use Permits. These subsections do not contain substantive standards for land use approval.

1 GCZO Section 7.010(A)(2) describes conditions that "may be imposed... [if] determined
2 necessary to avoid a detrimental impact, and to otherwise protect the best interests of the
3 surrounding area and the County as a whole." The ordinance lists discretionary conditions and
4 does not contain substantive standards. In the *Final Order on the Application*, the Department
5 noted its consultation with the Gilliam County Planning Director regarding conditions that the
6 County would consider "necessary to avoid a detrimental impact and to otherwise protect the
7 best interests of the surrounding area and the County as a whole." The Planning Director
8 recommended that the site certificate contain conditions comparable to those incorporated in
9 the Conditional Use Permits for Shepherds Flat North, Shepherds Flat Central and Shepherds
10 Flat South.³⁵ The Council adopted site certificate conditions incorporating the substance of the
11 County's recommendations.³⁶

12
13 The amendment, as requested, would not impact the Council's previous findings or site
14 certificate conditions. The amendment does not change the site boundary or alter the proposed
15 land use and there has been no change in fact or circumstance that affects the Council's
16 previous findings. Therefore, the Council finds that the Facility, as amended, would comply with
17 GCZO Section 7.010(A)(2).

18
19 **GCZO Section 7.020(T): Wind Power Generation Facility Siting Requirements**

20 *In addition to the standards of the zone in which the conditional use is located and the*
21 *general standards of this ordinance, conditional uses shall meet the following standards:*

22 * * *

23
24 **T. Wind Power Generation Facility Siting Requirements**

25
26 *1. Purpose. The Gilliam County Facility Siting Requirements are intended to establish a*
27 *local conditional use permitting process that is clear, timely, and predictable as well as*
28 *encompasses important local issues such as the health, safety and welfare of citizens in*
29 *Gilliam County.*

30
31 **2. Definitions**

32
33 *a. "Commercial Wind Power Generation." An activity carried out for monetary gain*
34 *using one or more wind turbine generators that has a combined generating capacity*
35 *greater than 1 MW.*

36
37 *b. "Decommissioning Fund." An adequate financial vehicle dedicated and maintained*
38 *with appropriate yearly adjustments to assure the money to dismantle the Wind*
39 *Power Generation Facility and to restore the site to a useful, nonhazardous*
40 *condition.*

³⁵ Email from Susie Anderson, Gilliam County Planning Director, June 3, 2010.

³⁶ *Final Order on the Application* at 33.

1 c. "Wind Power Generation Facility." An energy facility that consists of one or more
2 wind turbines or other such devices and their related or supporting facilities that
3 produce electric power from wind and are:

4
5 (1) Connected to a common switching station; or

6
7 (2) Constructed, maintained, or operated as a group of devices.

8
9 d. Energy Facility Siting Council (EFSC) a board of citizens that determines rather a
10 wind facility of 105 MW or more may be built in Oregon

11
12 3. Procedure. The procedure for taking action on the siting of a facility is a request for a
13 conditional use. A public hearing pursuant to Article 7 shall be held to determine if the
14 applicant meets the siting requirements for a Wind Power Generation Facility. The
15 requirement for a hearing will not apply to proposed facilities for which EFSC is making
16 the land use decision.

17
18 4. Requirements under the Energy Facility Siting Council. If a holder of a Site Certificate
19 issued by the Oregon Energy Facility Siting Council requests a conditional use permit for
20 an energy facility as outlined under ORS 469.401(3) and pays the requisite fee, the
21 Planning Director shall issue such conditional use permit. The conditional use permit
22 shall incorporate only the standards and conditions in Gilliam County's land use and
23 other ordinances as contained in the site certificate. Issuance of the Conditional Use
24 Permit shall be done promptly, not taking more than four weeks once it has been
25 determined that a valid Site Certificate has been issued, the applicant has submitted a
26 complete application and the fee has been received.

27
28 Subsections 1, 2, and 3 of Section 7.020(T) are definitional and procedural provisions that do
29 not contain substantive land use standards applicable to the proposed use. Pursuant to
30 subsection (4) and ORS 469.401(3), the site certificate holder obtained a conditional use permit
31 from Gilliam County promptly after EFSC issued Montague a site certificate.

32
33 5. Wind Power Generation Facility Siting Requirements. The requirements set out in this
34 section shall apply for the application and review of the siting of a Wind Power
35 Generation Facility and the issuance of a Gilliam County Facility Conditional Use Permit.

36
37 a. The following information shall be provided as part of the application:

38
39 (1) A general description of the proposed Wind Power Generation Facility, a tentative
40 construction schedule, the legal description of the property on which the facility will
41 be located, and identification of the general area for all components of the proposed
42 Wind Power Generation Facility, including a map showing the location of
43 components.

1
2 (2) Identification of potential conflicts, if any, with:
3

4 (a) Accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands
5 devoted to farm uses;
6

7 (b) Other resource operations and practices on adjacent lands except for wind
8 power generation facilities on such adjacent lands; and
9

10 (c) The nature and extent of the proposed facility on the cost of accepted farm or
11 forest practices on surrounding EFU land.
12

13 (3) A Transportation Plan, with proposed recommendations, if any, reflecting the
14 guidelines provided in the Gilliam County's Transportation System Plan (TSP) and the
15 transportation impacts of the proposed Wind Power Generation Facility upon the
16 local and regional road system during and after construction, after consultation with
17 the Gilliam County Roadmaster. The plan will designate the size, number, location
18 and nature of vehicle access points.
19

20 (4) An avian impact monitoring plan. The avian monitoring plan shall be designed
21 and administered by the applicant's wildlife professionals. For projects being sited by
22 EFSC, compliance with EFSC's avian monitoring requirements will be deemed to meet
23 this requirement. The plan shall include the formation of a technical oversight
24 committee to review the plan, and consist of the following persons:
25

26 (a) The landowners/farm tenants.
27

28 (b) Facility owner/operator representative. (Chair)
29

30 (c) Oregon Department of Fish and Wildlife representative, if the agency chooses
31 to participate.
32

33 (d) Two Gilliam County residents with no direct economic interest in the project
34 and recommended by the applicants for appointment by the Gilliam County
35 Board of Commissioners.
36

37 (e) U.S. Fish and Wildlife representative, if the agency chooses to participate.
38

39 (f) Gilliam County Planning Commission member.
40

41 If there are no interested residents that are willing to serve on the TAC, this
42 portion of the requirement may be waived. At the request of applicant, this
43 committee requirement may be waived or discontinued by the County.

1 (5) A Covenant Not to Sue with regard to generally accepted farming practice shall
2 be recorded with the County. Generally accepted farming practices shall be
3 consistent with the definition of Farming Practices under ORS 30.930. The applicant
4 shall covenant not to sue owners, operators, contractors, employees, or invitees of
5 property zoned for farm use for generally accepted farming practices.
6

7 (6) A fire prevention and emergency response plan for all phases of the life of the
8 facility. The plan shall address the major concern associated with the terrain, dry
9 conditions, and limited access.
10

11 (7) An erosion control plan, developed in consultation with the Gilliam County Road
12 Department. The plan should include the seeding of all road cuts or related bare road
13 areas as a result of all construction, demolition and rehabilitation with an
14 appropriate mix of native vegetation or vegetation suited to the area. This
15 requirement will be satisfied if the applicant has an NPDES (National Pollution
16 Discharge Elimination System) permit.
17

18 (8) A weed control plan addressing prevention and control of all Gilliam County
19 identified noxious weeds directly resulting from the Wind Power Generation Facility
20 during preparation, construction, operation and demolition/rehabilitation.
21

22 (9) A socioeconomic impact assessment of the Wind Power Generation Facility,
23 evaluating such factors as, but not limited to, the project's effects upon the social,
24 economic, public service, cultural, visual, and recreational aspects of affected
25 communities. These effects can be viewed as either positive or negative. In order to
26 maximize potential benefits and to mitigate outcomes that are viewed problematic,
27 decision makers need information about the socioeconomic impacts that are likely to
28 occur.
29

30 (10) The requirements of OAR 660-033-0130(37) will be satisfied.
31

32 (11) Information pertaining to the impacts of the Wind Power Generation Facility on:
33

34 (a) Wetlands;
35

36 (b) Wildlife (all potential species of reasonable concern);
37

38 (c) Wildlife habitat;
39

40 (d) Criminal activity (vandalism, theft, trespass, etc.) and proposed actions, if any,
41 to avoid,
42 minimize or mitigate negative impacts.
43

1 (12) A dismantling and decommissioning plan of all components of the Wind Power
2 Generation Facility, as provided in 6. of this section.
3

4 GCZO Section 7.020(T)(5)(a) sets out the requirements for an application for the siting of a
5 Wind Power Generation Facility.³⁷ Although these requirements are not substantive land use
6 standards, the information requested by the procedural provisions were included in the original
7 ASC. The discussion of GCZO Section 7.020(T)(5)(a) provides a cross-reference to the
8 comparable sections as provided in the site certificate application.
9

10 Subsection (1) requires a general description of the proposed Facility, construction, schedule,
11 legal description and map of the proposed facility component locations. The certificate holder
12 provided this information in Exhibits B and C of its Application for Site Certificate.
13

14 Subsection (2) requires identification of potential conflicts with farming practices, resource
15 operations and practices on adjacent lands and impact of the proposed Facility on the cost of
16 accepted farm or forest practices on surrounding EFU land. The certificate holder provided this
17 information in Exhibit K.
18

19 Subsection (3) requires a transportation plan. The certificate holder provided information about
20 transportation routes to the Facility site in Exhibit U. If any modifications of public roads are
21 necessary, the certificate holder must consult with the Gilliam County Public Works Director
22 and comply with County design standards (Condition 71).³⁸ Any modifications of County roads
23 would be confined to the County rights-of-way.
24

25 Subsection (4) requires an avian impact monitoring plan. For facilities under Council siting
26 jurisdiction, the GCZO provides that compliance with the Council's avian monitoring
27 requirements satisfies the County requirement. The certificate holder provided information
28 about avian impacts and proposed monitoring in Exhibit P, and the Council adopted Condition
29 91 incorporating the *Wildlife Monitoring and Mitigation Plan*.
30

31 Subsection (5) requires a Covenant Not to Sue with regard to generally accepted farm practices.
32 The certificate holder discussed this requirement in Exhibit K. The Council adopted Condition 41
33 requiring the certificate holder to record a Covenant Not to Sue before beginning construction
34 of the Facility.
35

36 Subsection (6) requires a fire prevention and emergency response plan. The certificate holder
37 provided information about fire prevention and response in Exhibits B and U. The Council
38 adopted Condition 60, requiring the certificate holder to develop and implement fire safety
39 plans during facility construction and operation.
40

³⁷ The certificate holder addressed these requirements (App, Exhibit K, pp. 19-23).

³⁸ Response to RAI U1 (App Supp, Exhibit U, p. 1).

1 Subsection (7) requires an erosion control plan. The certificate holder provided information
2 about erosion control in Exhibit I. The Council adopted Condition 80, requiring compliance with
3 an Erosion and Sediment Control Plan during Facility construction, and Condition 85, requiring
4 the certificate holder to implement erosion monitoring and control measures during Facility
5 operation.

6
7 Subsection (8) requires a weed control plan. The certificate holder provided information about
8 weed control in Exhibits K and P. The Council adopted Condition 92, addressing construction
9 impacts to agricultural land and requiring the certificate holder to implement the *Revegetation*
10 *Plan* (which includes weed control measures), and Condition 43, requiring the certificate holder
11 to implement a weed control plan during Facility operation.

12
13 Subsection (9) requires a socioeconomic impact assessment, evaluating such factors as public
14 services, cultural impacts, visual impacts and recreational opportunities. The certificate holder
15 provided information about these matters in Exhibit R (scenic resources), Exhibit S (cultural
16 resources), Exhibit T (recreational opportunities) and Exhibit U (public services).

17
18 Subsection (10) requires OAR 660-033-0130(37) to be satisfied. In the *Final Order on the*
19 *Application*, the Council found the Facility to comply with OAR 660-033-0130(37). The
20 amendment would not impact the Council's previous findings, and the Facility, as amended,
21 would comply with OAR 660-033-0130(37).

22
23 Subsection (11) requires information regarding wetlands, wildlife, wildlife habitat and criminal
24 activity. The certificate holder provided information about wetland impacts in Exhibit J, about
25 wildlife and wildlife habitat in Exhibits P and Q and about police protection in Exhibit U.

26
27 Subsection (12) requires a decommissioning plan. The certificate holder provided information
28 about decommissioning and site restoration in Exhibit W. Site restoration is addressed under
29 findings regarding the Council's Retirement and Financial Assurance Standard, OAR 345-022-
30 0050, discussed below.

31
32 *b. Gilliam County may impose clear and objective conditions in accordance with the*
33 *County Comprehensive Plan, County Development Code and State law, which Gilliam*
34 *County considers necessary to protect the best interests of the surrounding area, or*
35 *Gilliam County as a whole.*

36
37 GCZO Section 7.020(T)(5)(b) gives the County discretion to impose "clear and objective
38 conditions...necessary to protect the best interests of the surrounding area, or Gilliam County
39 as a whole." Gilliam County issued a conditional use permit for the Facility in accordance with
40 the requirements of the site certificate and ORS 469.401(3). The County may not impose
41 additional conditions outside of those considered and required by the Site Certificate. As
42 discussed above, the SAG did not suggest additional conditions for inclusion.

1 *c. Prior to commencement of any construction, all other necessary permits shall be*
2 *obtained, e.g., Gilliam County Zoning Permit, road access and other permits from the*
3 *Gilliam County Road Department, and from the Oregon Department of Transportation.*
4

5 In the *Final Order on the Application*, the Council adopted Condition 28, requiring the certificate
6 holder to obtain all necessary federal, state and local permits or approvals required for
7 construction. Further, Conditions 70-75 ensure that the Site Certificate complies with this
8 applicable substantive criterion. Condition 70 requires the certificate holder to obtain all
9 required permits from the Oregon Department of Transportation prior to beginning
10 construction. Condition 71 requires the certificate holder to design and construct new access
11 roads and private road improvements in accordance with standards approved by the Gilliam
12 County Road Department, or where applicable the Morrow County Public Works Department,
13 and where modifications of County roads are necessary, site certificate holder must construct
14 the modifications entirely within the County road rights-of-way and in conformance with
15 County road design standards with the approval of the Gilliam County Road Department.
16 Condition 75 requires the certificate holder to cooperate with the Gilliam County Road
17 Department and with the Morrow County Public Works Department to ensure any unusual
18 damage or wear to county roads that is caused by construction of the facility is repaired by the
19 certificate holder.

20
21 The requested amendment does not impact any of the previously listed conditions, nor does it
22 impact the ability of the certificate holder to comply with the conditions. Therefore, the
23 Department recommends that the Council find that the Facility, as amended, complies with
24 GCZO Section 7.020(T)(5)(c).

25
26 *d. The following setback requirements and restrictions apply to the siting of a facility:*
27 *The Wind Power Generation Facility shall be on property zoned EFU, and no portion of*
28 *the facility shall be within 3,520 feet of properties zoned residential use or designated on*
29 *the Comprehensive Plan as residential. (For clarification purposes of this section, EFU*
30 *Zones are not considered zoned for residential use.) Towers shall be set back at a*
31 *minimum, 110% of maximum total turbine height from blade tip height, measured from*
32 *the centerline of the turbine tower from:*

33
34 (1) *Any State, County or Federal right-of-way or the nearest edge of a State, County,*
35 *or Federal roadway, whichever is closer;*

36
37 (2) *Any right of ingress or egress on the owner's property;*

38
39 (3) *Any overhead utility lines;*

40
41 (4) *All property lines; if adjacent landowner agrees in writing to a lesser distance, this*
42 *requirement may be waived.*
43

1 (5) Any existing guy wire, anchor, or small wind energy tower on the property.

2 This provision governs the various setback requirements for wind generation facilities.

3
4 Subsection (d) requires the Facility to be on property zoned EFU and not within 3520 feet of
5 property zoned residential use or designated on the Comprehensive Plan as residential. In the
6 *Final Order on the Application*, the Council found the Facility to be located entirely on land
7 zoned EFU,³⁹ and, pursuant to Condition 42(a), required that all Facility components be at least
8 3520 feet from the property line of properties zoned residential use or designated in the Gilliam
9 County Comprehensive Plan as residential.⁴⁰ The requested amendment would not impact the
10 Council's previous findings or affect the certificate holder's ability to comply with the conditions
11 in the Site Certificate. This criterion is satisfied through the conditions of approval in the Site
12 Certificate. Therefore, the Council finds that the Facility, as amended, complies with GCZO
13 Section 7.020(T)(5)(d).

14
15 Subsection (d)(1) requires towers to be set back at a minimum, 110% of maximum total turbine
16 height from blade tip height, measured from the centerline of the turbine tower from any state,
17 county or federal right of way or the nearest edge of a state, county or federal roadway,
18 whichever is closer. Condition 42(b) of the Site Certificate requires a minimum distance of 110%
19 of maximum blade tip height, measured from the centerline of the turbine tower to the nearest
20 edge of any public road right-of-way. The requested amendment would not impact the ability
21 of the certificate holder to comply with the conditions of the site certificate. This criterion is
22 satisfied through the conditions of approval in the Site Certificate. Therefore, the Council
23 concludes that the Facility, as amended, would comply with GCZO Section 7.020(T)(5)(d)(1).

24
25 Subsection (d)(2) require towers to be set back at a minimum, 110% of maximum total turbine
26 height from blade tip height, measured from the centerline of the turbine tower from any right
27 of ingress or egress on the owner's property. "Any right of ingress and egress on the owner's
28 property" is the point in which a private access road intersects with a public road. This is the
29 point where the County or the State, depending on who has jurisdiction over the road, grants
30 the right of ingress or egress. The Facility complies with this requirement per Condition 42(b).
31 The requested amendment would not impact the ability of the certificate holder to comply with
32 the conditions of the Site Certificate. This criterion is satisfied through the conditions of
33 approval in the Site Certificate. Therefore, the Council concludes that the Facility, as amended,
34 complies with GCZO Section 7.020(T)(5)(d)(2).

35
36 Subsection (d)(3) require towers to be set back at a minimum, 110% of maximum total turbine
37 height from blade tip height, measured from the centerline of the turbine tower from any
38 overhead utility line. The Site Certificate currently does not require a 110% setback from
39 overhead utility lines. However, the certificate holder has voluntarily offered to comply with the
40 setback from utility lines. The Council adopts Condition 42(i) to incorporate the requirements in

³⁹ *Final Order on the Application* at 24.

⁴⁰ Montague Site Certificate at 13.

1 this ordinance. The Council finds that the Facility, as amended, complies with the GCZO Section
2 7.020(T)(5)(d)(3).

3
4 Subsection (d)(4) requires towers to be set back at a minimum, 110% of maximum total turbine
5 height from blade tip height, measured from the centerline of the turbine tower from all
6 property lines. This requirement may be waived if the adjacent landowner agrees in writing to a
7 lesser distance. "All property lines" within the meaning of this setback provision are intended to
8 apply to the boundaries of the certificate holder's lease area. Condition 42(d) requires the
9 certificate holder to maintain a minimum distance of 110% of maximum blade tip height,
10 measured from the centerline of the turbine tower to the nearest boundary of the certificate
11 holder's lease area. Based upon the understanding that this setback applies to property lines of
12 non-participating landowners, the certificate holder has volunteered to comply with this
13 setback requirement. No new condition of approval is required. Per Condition 42(d), the
14 Facility will comply with the setback requirement. The Council finds that the Facility, as
15 amended, complies with GCZO Section 7.020(T)(5)(d)(4).

16
17 Subsection (d)(5) requires towers to be set back at a minimum, 110% of maximum total turbine
18 height from blade tip height, measured from the centerline of the turbine tower from any
19 existing guy wire, anchor, or small wind energy tower on the property. The Site Certificate
20 currently does not specifically require a 110% setback from existing guy wires, anchors or small
21 wind energy towers. However, per Condition 42(d), all towers are required to be sited 110%
22 from non-leased property, resulting in more than 110% setback from existing guy wires,
23 anchors or small wind energy towers on non-leased property. In the case of small wind energy
24 towers on leased property, the certificate holder coordinates with landowners regarding
25 existing structures on their property. The Council finds that the facility, as amended, complies
26 with GCZO Section 7.020(T)(5)(d)(5).

27
28 Subsection (d)(6) requires towers to be set back at a minimum, 110% of maximum total turbine
29 height from blade tip height, measured from the centerline of the turbine tower from any
30 existing residence, unless landowner agrees otherwise. Condition 42(c) requires a distance of
31 1,320 feet from the nearest residence existing at the time of tower construction, which is
32 greater than the new County setback of 110% of tip height from existing residences. Per
33 Condition 42(c) the Facility will comply with the setback requirement. The requested
34 amendment would not impact the ability of the certificate holder to comply with the conditions
35 of the Site Certificate. This criterion is satisfied through the conditions of approval in the Site
36 Certificate, and no new condition of approval is required. Therefore, the Council concludes that
37 the Facility, as amended, would comply with GCZO Section 7.020(T)(5)(d)(6).

38
39 Subsection (d)(7) requires towers to be set back at a minimum, 150% of maximum total turbine
40 height from blade tip height, measured from the centerline of the turbine tower from federal
41 transmission lines, unless the affected parties agree otherwise. The Site Certificate currently
42 does not require a 150% setback from federal transmission lines. However, the certificate
43 holder has volunteered to comply with the 150% tip height setback from the BPA transmission

1 lines in the vicinity. The Council adopts Condition 42(j) to address this setback requirement.
2 This criterion is satisfied through the conditions of approval in the Site Certificate. Therefore,
3 the Council concludes that the Facility, as amended, complies with GCZO Section
4 7.020(T)(5)(d)(7).

5
6 *(e) Reasonable efforts shall be made to blend the wind facility's towers with the natural*
7 *surroundings in order to minimize impacts upon open space and the natural landscape.*
8

9 The Council previously found that "reasonable efforts" to "blend the wind facility's towers with
10 the natural surroundings" are measures that reduce the visual impact of the towers on the
11 landscape while providing sufficient visibility of the Facility for aviation safety and making
12 effective use of the wind resource for power generation. This requirement is satisfied through
13 Condition 102 and 104 which require the certificate holder to minimize the visual impacts of
14 the turbine towers. The requested amendment would not impact the obligation of the
15 certificate holder to comply with the conditions of the Site Certificate, nor would the
16 amendments impact the Council's previous finding. The Facility's visual impact is discussed
17 further in the Council's Scenic Resources Standard below at page 38. Based on previous findings
18 and subject to the Site Certificate conditions, the Council concludes that the Facility, as
19 amended, complies with GCZO Section 7.020(T)(5)(e).

20
21 *(f) Reasonable efforts shall be taken to protect and to preserve existing trees, vegetation,*
22 *water resources, wildlife habitat or other significant natural resources.*
23

24 *(g) The turbine towers shall be designed and constructed to discourage bird nesting and*
25 *wildlife attraction.*
26

27 The Facility's impacts on wildlife and wildlife habitat are addressed in the discussion of the
28 Council's Threatened and Endangered Species standard below in Section III.A.10 and Fish and
29 Wildlife Habitat standard below in Section III.A.9. Conditions 11-43-44, 80-87 and 91-101
30 require the Facility to comply with EFSC's standards for wildlife habitat, threatened and
31 endangered species, protected areas and scenic resources. The conditions require the
32 certificate holder to minimize impacts to avian species and sensitive wildlife species. The
33 proposed turbine towers would be smooth steel structures rather than lattice structures to
34 discourage bird nesting and perching (Condition 99).⁴¹ Turbine pad areas would be covered
35 with gravel, which would reduce weeds, eliminate a fire hazard and avoid the growth of cover
36 for raptor prey near turbine towers (Condition 57).⁴² For turbine types having pad-mounted
37 step-up transformers, the transformer cabinets at each turbine would be designed to avoid use
38 by raptors or prey species as artificial habitat (Condition 68). The amendments requested would
39 not impact the obligation of the certificate holder to comply with the conditions of the Site

⁴¹ App, Exhibit K, p. 24.

⁴² App, Exhibit B, p. 13.

1 Certificate. For the reasons stated above, the Council finds that Facility, as amended, complies
2 with GCZO Sections 7.020(T)(5)(f) and (g).

3
4 *(h) The turbine towers shall be of a size and design to help reduce noise or other*
5 *detrimental effects*
6

7 Conditions 106-108 require the certificate holder to meet DEQ noise regulations. The certificate
8 holder demonstrated in Exhibit X of the original ASC how the Facility will comply with the DEQ
9 Noise Control Regulations as discussed below at Section III.C.1. Other potential detrimental
10 effects include public safety concerns, which are addressed in the discussion of the Council's
11 Public Health and Safety Standards for Wind Energy Facilities at Section III.B.17. The
12 amendments requested would not impact the certificate holder's obligation to comply with the
13 conditions in the Site Certificate, nor would the requested amendment impact the Council's
14 previous findings. Therefore, the Council finds that the Facility, as amended, complies with
15 GCZO Section 7.020(T)(5)(h).

16
17 *(i) Private access roads shall be gated to protect the facility and property owners from*
18 *illegal or unwarranted trespass, and illegal dumping and hunting.*
19

20 Conditions 40, 66, 68 and 69 contain requirements that require gating in accordance with the
21 previously listed GCZO 7.020(T)(4)(d)(6). The requested amendment would not impact the
22 certificate holder's obligation to comply with the conditions in the Site Certificate, nor would
23 the amendment impact the Council's previous finding. The Council finds that the Facility, as
24 amended, complies with GCZO Section 7.020(T)(5)(i).

25
26 *(j) Where practicable the electrical cable collector system shall be installed underground,*
27 *at a minimum depth of 3 feet; elsewhere the cable collector system shall be installed to*
28 *prevent adverse impacts on agriculture operations.*
29

30 Condition 88 limits the amount of overhead line within the total collector line system and
31 requires that the underground collector system meet this minimum depth. Accordingly, this
32 provision is satisfied and the Council concludes that the Facility, as amended, complies with
33 GCZO Section 7.020(T)(5)(j).

34
35 *(k) Required permanent maintenance/operations buildings shall be located off-site in*
36 *one of Gilliam County's appropriately zoned areas, except that such a building may be*
37 *constructed on-site if:*
38

39 *(1) The building is designed and constructed generally consistent with the character*
40 *of similar buildings used by commercial farmers or ranchers; and*
41

42 *(2) The building will be removed or converted to farm use upon decommissioning of*
43 *the Wind Power Generation Facility consistent with the provisions of this section.*

1 (a) To the extent feasible, the County will accept information presented by an
2 application for an EFSC proceeding in the form and on the scheduled required by
3 EFSC.
4

5 Conditions 102-104 require that the O&M facility be constructed consistent with the general
6 character of similar buildings in the area. The requested amendment would not impact the
7 certificate holder's obligation to comply with the conditions in the Site Certificate. This
8 provision is satisfied, and Council finds that the Facility, as amended, complies with GCZO
9 Section 7.020(T)(5)(k).
10

11 6. Decommissioning/Dismantling Process. The applicant's dismantling of incomplete
12 construction and/or decommissioning plan for the Wind Power Generation Facility shall
13 be completed and filed with the Planning Department prior to construction and shall
14 include the following information:
15

16 ***

17 g. For projects sited by EFSC, compliance with EFSC's financial assurance and
18 decommissioning standards shall be deemed to be in compliance with the
19 dismantling and decommissioning requirements of this Section.

20 7. Wind Power Generation Facility Siting Subsequent Requirements
21

22 a. A bond or letter of credit shall be established for the dismantling of uncompleted
23 construction and/or decommissioning of the facility. For projects being sited by the
24 State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit
25 required by EFSC will be deemed to meet this requirement.
26

27 Subsection (6)(a)-(g) and (7)(a) relate to decommissioning and dismantling process. The Council
28 previously found that the certificate holder satisfied the Council's Retirement and Financial
29 Assurance Standard. The requested amendment does not affect the Council's previous findings.
30 The Retirement and Financial Assurance standard is discussed in more detail below. Compliance
31 with the Council's standard satisfies the GCZO code requirements; therefore, the Council finds
32 that the Facility, as amended, complies with GCZO Section 7.020(6)(a)-(g) and (7)(a).
33

34 (7)(b) The actual latitude and longitude location or State plane NAD 83(91) coordinates
35 of each turbine tower, connecting lines, and transmission lines shall be provided to
36 Gilliam County once commercial electrical production begins.
37

38 Condition 45 requires the certificate holder to provide the Department and the Gilliam County
39 Planning Department the actual latitude and longitude location of each turbine tower,
40 connecting lines and transmission lines and a summary of as-built changes in the Facility
41 compared to the original plan. The requested amendment does not affect compliance with this
42 condition. Therefore, the Council concludes that the Facility, as amended, complies with GCZO
43 Section 7.020(T)(7)(b).

1 (7)(c)A summary of as-built changes in the facility from the original plan, if any, shall be
2 provided by the owner/operator.
3

4 Condition 45 requires the certificate holder to provide as-builts and summary of changes. The
5 Council may amend the Site Certificate under the rules in OAR Chapter 345, Division 27 and
6 pursuant to ORS 469.401(3), the County may amend the Conditional Use Permit for the Facility
7 to incorporate any new conditions from the amended Site Certificate. No new condition of
8 approval is required. Therefore, the Council concludes that the Facility, as amended, complies
9 with GCZO 7.020(T)(7)(c).
10

11 (7)(d) Within 120 days after the end of each calendar year, the facility owner/operator
12 shall provide Gilliam County an annual report including the following information: (9)
13 ***
14

15 For facilities under EFSC jurisdiction and for which an annual report is required, the
16 annual report to EFSC satisfies this requirement.
17

18 Condition 21(a)(i) requires the submission of annual reports as described in OAR 345-026-0080.
19 Therefore, the Council concludes that the Facility, as amended, complies with GCZO Section
20 7.020(T)(7)(d).
21

22 **Conclusion**

23
24 Based on the findings of fact, reasoning and proposed conditions discussed above, the Council
25 finds that the Facility, as amended, complies with all applicable substantive criteria from the
26 GCZO, and therefore satisfies the Council's Land Use Standard.
27

28 **III.A.7. Protected Areas: OAR 345-022-0040**

29
30 (1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate
31 for a proposed facility located in the areas listed below. To issue a site certificate for a
32 proposed facility located outside the areas listed below, the Council must find that,
33 taking into account mitigation, the design, construction and operation of the facility are
34 not likely to result in significant adverse impact to the areas listed below. References in
35 this rule to protected areas designated under federal or state statutes or regulations are
36 to the designations in effect as of May 11, 2007:
37

38 (a) National parks, including but not limited to Crater Lake National Park and Fort
39 Clatsop National Memorial;
40

41 (b) National monuments, including but not limited to John Day Fossil Bed National
42 Monument, Newberry National Volcanic Monument and Oregon Caves National
43 Monument;

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

4
5 (d) National and state wildlife refuges, including but not limited to Ankeny, Bandon
6 Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart
7 Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,
8 Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper
9 Klamath, and William L. Finley;

10
11 (e) National coordination areas, including but not limited to Government Island,
12 Ochoco and Summer Lake;

13
14 (f) National and state fish hatcheries, including but not limited to Eagle Creek and
15 Warm Springs;

16
17 (g) National recreation and scenic areas, including but not limited to Oregon Dunes
18 National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon
19 Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

20
21 (h) State parks and waysides as listed by the Oregon Department of Parks and
22 Recreation and the Willamette River Greenway;

23
24 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage
25 Areas pursuant to ORS 273.581;

26
27 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine
28 Sanctuary, OAR Chapter 142;

29
30 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
31 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed
32 as potentials for designation;

33
34 (l) Experimental areas established by the Rangeland Resources Program, College of
35 Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,
36 the Starkey site and the Union site;

37
38 (m) Agricultural experimental stations established by the College of Agriculture,
39 Oregon State University, including but not limited to: Coastal Oregon Marine
40 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
41 Center, Hood River Agriculture Research and Extension Center, Hermiston Columbia
42 Basin Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
43 Center, Moro North Willamette Research and Extension Center, Aurora East Oregon

1 Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern
2 Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research
3 Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon
4 Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond
5 Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport
6 Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath
7 Falls;

8
9 (n) Research forests established by the College of Forestry, Oregon State University,
10 including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett
11 Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the
12 Marchel Tract;

13
14 (o) Bureau of Land Management areas of critical environmental concern,
15 outstanding natural areas and research natural areas;

16
17 (p) State wildlife areas and management areas identified in OAR chapter 635,
18 Division 8.

19 ***

20
21 **Findings of Fact**

22
23 In the *Final Order on the Application*, the Council found that the Facility, as proposed, would not
24 be located in any protected area listed in OAR 345-022-0040 and that the design, construction
25 and operation of the Facility, taking mitigation into account, was not likely to result in
26 significant adverse impacts to the protected areas.⁴³ The Council determined that during
27 Facility operation, the proposed wind turbines would not be visible from vantage points within
28 the Arlington State Park, the John Day State Park or the Willow Creek Wildlife Area. However,
29 the Council noted that many turbines would be visible from locations within the Horn Butte
30 Wildlife Area, but affirmed that the Horn Butte Wildlife Area is protected because of the
31 wildlife habitat, and the turbines would not affect the wildlife habitat. Therefore, the Council
32 found the Facility to not have any significant adverse visual impacts on protected areas. The
33 Council's previous findings are incorporated by this reference.

34
35 The extension of the construction deadlines and the reduction in the blade tip clearance in
36 Condition 27(d) do not affect the Council's previous findings. The amendment does not seek to
37 enlarge the existing site boundary or physical components of the Facility. Nor does the
38 amendment request changes to the previously approved range of turbine types or sizes,
39 maximum number of turbines or maximum generation capacity. Further, the turbine hub-
40 height will not exceed 100 meters and the turbine blade tip height will not exceed 150 meters
41 (Condition 27(c)). Therefore, the requested amendment will have no impact on the Council's

⁴³ *Final Order on the Application* at 65.

1 previous findings or impact the facility's compliance with the Council's Protected Areas
2 standard.

3
4 **Conclusion**

5
6 The Council finds that the Facility, as amended, complies with the Protected Areas Standard.

7
8 **III.A.8. Retirement and Financial Assurance: OAR 345-022-0050**

9
10 *To issue a site certificate, the Council must find that:*

11
12 (1) *The site, taking into account mitigation, can be restored adequately to a useful, non-*
13 *hazardous condition following permanent cessation of construction or operation of the*
14

15 In the *Final Order on the Application*, the Council found that the site could be restored to a
16 useful, non-hazardous condition.⁴⁴ Those findings are incorporated by this reference. To ensure
17 compliance with the certificate holder's obligations, the Council adopted Conditions 8, 9, 32
18 and 33 in the Site Certificate.⁴⁵ Further, the Council found that the certificate holder
19 demonstrated a reasonable likelihood of obtaining a bond or letter of credit, satisfactory to the
20 Council, in an amount adequate to restore the site to a useful, non-hazardous condition. The
21 certificate holder provided a letter from Caja de Ahorros y Pendiones de Barcelona, dated April
22 24, 2010 stating that Iberdrola Renewables, as an affiliate of Iberdrola SA, had "sufficient
23 available letter of credit capacity" to support a request for a letter of credit in the required
24 amount to restore the site.⁴⁶ While the Council noted this letter did not constitute a firm
25 commitment, it did provide evidence of the reasonable likelihood that the certificate holder
26 could obtain the necessary financial assurance. Based upon those findings and conditions, the
27 Council concluded that the certificate holder met the Retirement and Financial Assurance
28 standard.⁴⁷ The Council's previous findings and conclusions are incorporated by this reference.
29

30 The proposed amendments do not affect the Council's previous findings. There has been no
31 change of facts or circumstances affecting the basis for the Council's site restoration cost
32 estimate, nor has there been any change of circumstance that would affect the Council's
33 findings. The certificate holder will remain subject to the Site Certificate conditions in the *Final*
34 *Order on the Application*, ensuring that the amount of financial assurance remains consistent
35 with the Council's previous findings.

⁴⁴ *Final Order on the Application* at 19.

⁴⁵ Pursuant to these conditions, prior to construction, the certificate holder must submit a final retirement plan for approval by the Council (Condition 9), and the retirement plan must describe the activities necessary to restore the site a useful, non-hazardous condition. Condition 8 and 32 require the certificate holder to maintain a bond or letter of credit that ensures funds are available to the Council to restore the site if the certificate holder does not retire the facility as required by Condition 9. Condition 33 relates to the Council's requirements should an applicant elect to use a bond.

⁴⁶ *Id.* at 22.

⁴⁷ *Id.* at 22.

1 **Conclusion**

2
3 The Council finds that the Facility, as amended, complies with the Council's Retirement and
4 Financial Assurance standard.

5
6 **III.A.9. Fish and Wildlife Habitat: OAR 345-022-0060**

7
8 *To issue a site certificate, the Council must find that the design, construction and operation of*
9 *the facility, taking into account mitigation, are consistent with the fish and wildlife habitat*
10 *mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.*

11
12 **Findings of Fact**

13
14 The Fish and Wildlife Standard requires the Council to find that the design, construction, and
15 operation of the Facility are consistent with fish and wildlife habitat mitigation goals as set forth
16 in OAR 635-415-0025.

17
18 In the *Final Order on the Application*, the Council found that the design, construction and
19 operation of the proposed Facility would be consistent with ODFW's habitat mitigation goals
20 and standards. The Council made findings regarding the characteristics of the habitat types
21 within the site boundary and the State sensitive species observed within or near the lease
22 boundaries during avian point-counts and other wildlife surveys. For micrositeing purposes, in
23 the original ASC, the certificate holder estimated the maximum habitat impacts of the Facility.
24 The studies contained in the application record were based on worst-case scenarios for
25 evaluating potential impacts on fish and wildlife habitat. Based on those findings and the site
26 certificate conditions contained therein, the Council concluded that the proposed Facility
27 complied with the Council's Fish and Wildlife Habitat Standard.⁴⁸ The Council's previous
28 findings and conclusions are incorporated by this reference.

29
30 To ensure compliance with the Council standards, the Council adopted a series of site
31 certificate conditions. Condition 95 ensures that additional plant surveys are completed; that
32 additional wildlife surveys are completed prior to construction; that additional avian use
33 surveys are completed prior to construction; and that additional raptor nest surveys are
34 completed prior to construction. Condition 31 requires the certificate holder to provide the
35 Department a description of the final design configuration and an assessment of the affected
36 habitats before beginning construction, and consultation with ODFW at the time of the pre-
37 construction habitat assessments. Condition 94 pertains to Washington ground squirrel survey
38 coordination and protection. Condition 99 addresses facility design measures to reduce
39 potential adverse effects to avian species. Condition 91 incorporates the Wildlife Monitoring
40 and Mitigation Plan, which requires the certificate holder to conduct short-term and long-term
41 raptor nest monitoring to determine whether operation of the facility results in a reduction of

⁴⁸ *Final Order on the Application* at 113.

1 nesting activity or nesting success in the local populations of golden eagles and other raptors.
2 The Wildlife Monitoring and Mitigation Plan also requires two years of fatality monitoring for all
3 avian species at the facility site during operation, and requires the certificate holder to report
4 to the USFWS on any fatalities of species protected under the Migratory Bird Treaty Act.
5 Condition 39 requires the certificate holder to design components of the Facility to occupy the
6 minimum area needed for safe operation and to locate components to minimize disturbance of
7 farming practices. Condition 93 requires the certificate holder to protect and enhance a
8 mitigation area as described in the Habitat Mitigation Plan. Condition 91 requires the certificate
9 holder to conduct wildlife monitoring as described in the Wildlife Monitoring and Mitigation
10 Plan. Condition 96 requires avoidance of construction impacts to raptors during the nesting
11 season. Condition 98 restricts construction activities to surveyed and approved areas. Condition
12 100 requires the certificate holder to instruct construction and operations personnel about
13 sensitive species present onsite and about exclusion areas, permit requirements and other
14 environmental issues.

15
16 In its requested amendment, the certificate holder is proposing to extend the construction
17 deadlines and reduce the minimum blade tip clearance required by Condition 27(d). The
18 amendment, as requested, would not affect the Council's previous findings nor would it impact
19 the facility's compliance with the Council's Fish and Wildlife Standard.

20
21 In response to the Department's request for comments, ODFW recommended that the site
22 certificate holder complete Washington ground squirrel surveys prior to the construction of the
23 project, especially if construction of the project starts three years after the original Washington
24 ground squirrel surveys were completed as ODFW considers Washington ground squirrel
25 surveys valid for up to three years after completion.⁴⁹ ODFW acknowledged that Condition 94
26 of the Site Certificate required Washington ground squirrel surveys prior to construction, but,
27 nonetheless, stressed its importance due to the request for an extension of the construction
28 deadlines. Additionally, ODFW recommended that the site certificate holder complete an
29 updated raptor nest survey prior to construction.

30
31 The certificate holder responded to ODFW's comment, and confirmed that the amendments
32 requested do not seek any changes to Condition 94 and 95 of the Site Certificate. As discussed
33 above, Condition 94 and 95 require additional wildlife and raptor nest surveys prior to
34 construction. Condition 94 requires the certificate holder to hire a qualified professional
35 biologist who has experience in detection of Washington Ground Squirrels to conduct surveys
36 using a survey protocol approved by ODFW. The condition requires the biologist to conduct the
37 protocol surveys in the active squirrel season in 2010 and in the active squirrel seasons in the
38 subsequent years until the beginning of construction.

39 The Department also received one public comment expressing concern about the wildlife
40 surveys and the necessity to appropriately update the impacts of the Facility. The original

⁴⁹ After three years, due to the nature of the species, a new survey is needed to determine if additional Washington ground squirrel colonies have emerged in the area.

1 studies contained in the Site Certificate record were based on worst-case scenarios, and, based
2 upon those studies the Council found that the Facility complied with the Fish and Wildlife
3 Habitat Standard. As noted previously, Condition 94-96 of the Site Certificate require updated
4 survey results prior to construction, ensuring that wildlife surveys are current prior to
5 construction and are appropriately taken into account during final project design. Additionally,
6 Condition 94 requires a 785-foot buffer around active Washington Ground Squirrel colonies.
7 ODFW established the 785- buffer around active Washington Ground Squirrel burrows to define
8 Category 1 habitat. The amendment requested would not impact the Facility's obligation to
9 comply with these site certificate requirements. The existing site boundary will not be
10 increased, and there is no change to the previously-approved range of turbine types or sizes,
11 maximum number of turbines or the maximum generating capacity of the facility. The total
12 number of turbines will not exceed 269 and the total MW will not exceed 404 MW. The turbine
13 hub-height will not exceed 100 meters and the turbine blade tip height will not exceed 150
14 meters. Further, ODFW did not raise concerns about or request big game surveys in this
15 amendment request. Therefore, the amendment results in no change that would alter the basis
16 for the Council's earlier findings.

17
18 With regard to the reduction in blade tip clearance and avian concerns, Condition 95 requires
19 avian use studies to be completed before beginning construction and the report must be
20 provided to the Department and ODFW. Additionally, before beginning construction the
21 certificate holder must complete raptor nest surveys, and provide the report to the Department
22 and ODFW. The *Wildlife Mitigation and Monitoring Plan*, incorporated in Condition 91, requires
23 two years of fatality monitoring for all avian species at the facility site during operation, and
24 requires the certificate holder to report to the USFWS on any fatalities of species protected
25 under the Migratory Bird Treaty Act.

26
27 The amendment seeks to extend the construction deadlines and reduce the minimum blade tip
28 clearance required in Condition 27(d). For the reasons discussed above and subject to the Site
29 Certificate conditions described, the Council finds that there has been no change in facts or
30 circumstances that affect its previous findings of compliance or impact the Facility's ability to
31 comply with the Council's Fish and Wildlife Standard.

32 **Conclusion**

33
34
35 The Council finds that the Facility, as amended, complies with the Council's Fish and Wildlife
36 Standard.

37 **III.A.10. Threatened and Endangered Species: OAR 345-022-0070**

38
39
40 *To issue a site certificate, the Council, after consultation with appropriate state agencies, must*
41 *find that:*

1 (1) For plant species that the Oregon Department of Agriculture has listed as threatened
2 or endangered under ORS 564.105(2), the design, construction and operation of the
3 proposed facility, taking into account mitigation:

4
5 (a) Are consistent with the protection and conservation program, if any, that the
6 Oregon Department of Agriculture has adopted under ORS 564.105(3); or

7
8 (b) If the Oregon Department of Agriculture has not adopted a protection and
9 conservation program, are not likely to cause a significant reduction in the likelihood
10 of survival or recovery of the species; and

11
12 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as
13 threatened or endangered under ORS 496.172(2), the design, construction and operation
14 of the proposed facility, taking into account mitigation, are not likely to cause a
15 significant reduction in the likelihood of survival or recovery of the species.

16
17 **Findings of Fact**

18
19 The Threatened and Endangered Species Standard requires the Council to find that the design,
20 construction, and operation of the Facility are consistent with plant protection and
21 conservation programs adopted by the Oregon Department of Agriculture under ORS
22 564.105(2). If the Department of Agriculture has not adopted a protection and conservation
23 program, the Council must find that the Facility is not likely to cause a significant reduction in
24 the likelihood of survival or recovery of the species. With respect to wildlife species, the Council
25 must find that the design, construction and operation of the Facility, taking into account
26 mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery
27 of species listed as threatened or endangered by Oregon Fish and Wildlife Commission under
28 ORS 469.172(2).

29
30 In the *Final Order on the Application*, the Council found that the design, construction and
31 operation of the Facility did not have the potential to significantly reduce the likelihood of the
32 survival or recovery of any threatened or endangered plant or wildlife species listed under
33 Oregon law. The Council found one state-listed threatened plant species and one state
34 candidate plant species in the Facility site; however, the Council concluded that Condition 95
35 would ensure protection of the state-listed species and candidate species.⁵⁰

36
37 With regard to wildlife, the Council found that the only wildlife species that could occur within
38 the site boundary, based on habitat suitability, were bald eagles and Washington ground
39 squirrels. However, based on the limited use of the Facility site by bald eagles and considering
40 the mitigation measures required by the Site Certificate conditions (condition 88, 94, 95, 99, 68,
41 101), the Council found that the design, construction and operation of the Facility was not likely

⁵⁰ Laurent's milk-vetch and sessile mousetail were observed within the facility site boundary.

1 to cause a significant reduction in the likelihood of survival or recovery of the bald eagle species
2 or Washington Ground Squirrels.⁵¹ Therefore, the Council concluded that the Facility complied
3 with the Threatened and Endangered Species Standard. The Council's previous findings are
4 incorporated by this reference.

5
6 The requested amendment would extend the construction and completions deadlines, and
7 reduce the minimum blade-tip clearance from 41 meters above ground to 20 meters above
8 ground. The amendment would not change the site boundary or impact the construction or
9 operation of the Facility. There has been no change of circumstance or fact that affects the
10 Council's previous findings or impacts the Facility's ability to comply with the Threatened and
11 Endangered Species standard.

12 13 Conclusion

14
15 For the reasons discussed above, the Council finds that the Facility, as amended, complies with
16 the Council's Threatened and Endangered Species Standard.

17 18 III.A.11. Scenic Resources: OAR 345-022-0080

19
20 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*
21 *find that the design, construction and operation of the facility, taking into account*
22 *mitigation, are not likely to result in significant adverse impact to scenic resources and*
23 *values identified as significant or important in local land use plans, tribal land*
24 *management plans and federal land management plans for any lands located within the*
25 *analysis area described in the project order.*

26 27 Findings of Fact

28
29 The Scenic Resources Standard requires the Council to find that the design, construction, and
30 operation of the Facility are not likely to result in adverse impacts to scenic resources.

31
32 In the *Final Order on the Application*, the Council found that the design, construction and
33 operation of the Facility, taking into account mitigation, were not likely to result in significant
34 adverse impacts to scenic resources and values identified as significant or important in local
35 land use plans, tribal land management plans and federal land management plans for any lands
36 located within the analysis area. To ensure protection, the Council adopted Conditions 102, 103
37 and 104, requiring appropriate mitigation measures.⁵² The Council's previous findings and
38 conditions are incorporated by this reference.

39

⁵¹ *Final Order on the Application* at 91-92.

⁵² *Id.* at 66.

1 The proposed amendment, seeking to extend the construction deadlines and reduce the
2 minimum blade tip clearance in Condition 27(d), would not affect the Council's previous
3 findings. The changes proposed would not substantially change the facts on which the Council
4 relied in its previous findings regarding the visual impacts on identified scenic resources or
5 values. The total number of turbines will not exceed 269 and the total MW of the turbine will
6 not exceed 3.0 MW. The turbine hub-height will not exceed 100 meters and the turbine blade
7 tip height will not exceed 150 meters. The requested amendment will not impact the Facility's
8 compliance with the Scenic Resources standard.

9 10 Conclusion

11
12 For the reasons discussed above, the Council finds that the Facility, as amended, complies with
13 the Council's Scenic Resources standard.

14 15 III.A.12. Historic, Cultural and Archaeological Resources: OAR 345-022-0090

16
17 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
18 *Council must find that the construction and operation of the facility, taking into account*
19 *mitigation, are not likely to result in significant adverse impacts to:*

20
21 *(a) Historic, cultural or archaeological resources that have been listed on, or would*
22 *likely be listed on the National Register of Historic Places;*

23
24 *(b) For a facility on private land, archaeological objects, as defined in ORS*
25 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

26
27 *(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*
28

29 Findings of Fact

30
31 This standard requires the Council to evaluate whether the Facility would have significant
32 adverse impacts to historic, cultural, or archaeological resources. Under ORS 469.501(4), the
33 Council may issue a Site Certificate without making the findings required by this section.
34 Nevertheless, the Council may impose Site Certificate conditions based on the requirements of
35 this standard.

36
37 In the *Final Order on the Application*, the Council adopted Condition 47, 48, 49, 50 and 51,
38 incorporating the certificate holder's proposed mitigation measures to protect and safeguard
39 and archaeological or cultural sites and resources on the Facility site. SHPO reviewed and
40 approved the proposed conditions.⁵³ The Council's previous findings are incorporated by this
41 reference.

⁵³ *Id.* at 117.

1 The amendment request seeks to extend the construction deadlines and reduce the minimum
2 blade tip clearance from 41 meters above ground to 20 meters above ground. The proposed
3 amendments do not change the facts or circumstances that would affect the Council's previous
4 findings. The requested amendment does not impact the Facility's compliance with the Historic,
5 Cultural and Archaeological Resources Standard.

6 7 Conclusion

8
9 The Council concludes that the facility, as amended, complies with the Council's Historic,
10 Cultural and Archaeological Resources Standard.

11 12 III.A.13. Recreation: OAR 345-022-0100

13
14 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*
15 *find that the design, construction and operation of a facility, taking into account*
16 *mitigation, are not likely to result in a significant adverse impact to important*
17 *recreational opportunities in the analysis area as described in the project order. The*
18 *Council shall consider the following factors in judging the importance of a recreational*
19 *opportunity:*

20
21 *(a) Any special designation or management of the location;*

22
23 *(b) The degree of demand;*

24
25 *(c) Outstanding or unusual qualities;*

26
27 *(d) Availability or rareness;*

28 *(e) Irreplaceability or irretrievability of the opportunity.*
29

30 Findings of Fact

31
32 The Recreation Standard requires the Council to find that the design, construction, and
33 operation of the Facility are not likely to result in adverse impacts to important recreational
34 opportunities.

35
36 In the *Final Order on the Application*, the Council found that subject to the Site Certificate
37 conditions, the design, construction and operation of the Facility were not likely to result in a
38 significant adverse impact to any important recreational opportunities in the analysis area.⁵⁴ To
39 mitigate possible impacts, the Council adopted Condition 105 excluding construction of turbine

⁵⁴ *Id.* at 78.

1 towers or met towers within 1000 feet of the centerline of a defined line-of-sight.⁵⁵ The
2 Council's previous findings are incorporated by this reference.

3
4 The requested amendment, extending the construction deadlines and reducing the minimum
5 blade tip clearance would not change the facts or circumstances upon which the Council relied.
6 The total number of turbines will not exceed 269, the turbine hub-height will not exceed 100
7 meters, and the turbine blade tip height will not exceed 150 meters. The requested amendment
8 would not change the site boundary or alter the potential impacts of the Facility on recreational
9 opportunities.

10 11 **Conclusion**

12
13 For the reasons discussed above, the Council concludes that the Facility, as amended, complies
14 with the Council's Recreation Standard.

15 16 **III.A.14 Public Services: OAR 345-022-0110**

17 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
18 *Council must find that the construction and operation of the facility, taking into account*
19 *mitigation, are not likely to result in significant adverse impact to the ability of public*
20 *and private providers within the analysis area described in the project order to provide:*
21 *sewers and sewage treatment, water, storm water drainage, solid waste management,*
22 *housing, traffic safety, police and fire protection, health care and schools.*

23 24 **Findings of Fact**

25
26 The Public Services Standard requires the Council to find that the construction and operation of
27 the Facility are not likely to result in significant adverse impacts to the ability of public and
28 private providers to provide the services listed in the standard above.

29
30 In the *Final Order on the Application*, the Council addressed the potential impacts of
31 construction and operation of the Facility on the ability of public and private providers within
32 the analysis area to provide public services, and the Council adopted conditions to ensure
33 compliance with the public services standard.⁵⁶ The Council's previous findings and conclusions
34 are incorporated by this reference.

35
36 The requested amendment would extend the construction start and completion deadlines and
37 reduce the minimum blade tip clearance but would not change the analysis of affected public
38 services. The proposed amendment would not change the site boundary or alter the potential
39 impacts of the Facility on the public services listed in OAR 345-022-0110(1). There has been no
40 change in facts or circumstances that would affect the Council's previous findings.

⁵⁵ Condition 105 describes a line-of-sight from the point at which a visitor standing at the BLM interpretive kiosk would view the visible wagon ruts that lie on the hillside to the west.

⁵⁶ Condition 109, 110, 80, 111, 112, 86, 76, 77, 71, 75, 28, 73, 74, 81, 42

1 **Conclusion**

2
3 For the reasons discussed above, the Council finds that the Facility, as amended, complies with
4 the Council's Public Services standard.

5
6 **III.A.15. Waste Minimization: OAR 345-022-0120**

7
8 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
9 *Council must find that, to the extent reasonably practicable:*

10
11 *(a) The applicant's solid waste and wastewater plans are likely to minimize*
12 *generation of solid waste and wastewater in the construction and operation of the*
13 *facility, and when solid waste or wastewater is generated, to result in recycling and*
14 *reuse of such wastes;*

15
16 *(b) The applicant's plans to manage the accumulation, storage, disposal and*
17 *transportation of waste generated by the construction and operation of the facility*
18 *are likely to result in minimal adverse impact on surrounding and adjacent areas.*
19

20 **Findings of Fact**

21
22 The Waste Minimization Standard requires the Council to find that the certificate holder will
23 minimize generation of solid waste and wastewater, and manage waste generated to result in
24 minimal adverse impacts on the surrounding and adjacent areas.

25
26 In the *Final Order on the Application*, the Council made findings and adopted Site Certificate
27 conditions regarding solid waste and wastewater likely to be generated during the construction,
28 operation and retirement of the Facility and impact on surrounding communities.⁵⁷ The
29 Council's previous findings are incorporated by this reference.

30
31 The requested amendment seeks to extend the construction deadlines and reduce the
32 minimum blade tip clearance from 41 meters above ground to 20 meters above ground. The
33 amendment would not change the analysis of waste minimization, or impact the Council's
34 previous findings.

35
36 **Conclusion**

37
38 For the reasons discussed above, the Council finds that the Facility, as amended, complies with
39 the Council's Waste Minimization standard.
40
41

⁵⁷ *Final Order on the Application* at 126.

1 III.A.16. Division 23 Standards

2
3 The Division 23 standards apply only to “nongenerating facilities” as defined in ORS
4 469.503(2)(e)(K), except non-generating facilities that are related or supporting facilities. The
5 Facility is not a nongenerating facility as defined in statute and therefore Division 23 is
6 inapplicable to the requested amendment.

7
8 III.A.17. Division 24 Standards

9
10 The Council’s Division 24 standards include specific standards for siting facilities including wind,
11 underground gas storage reservoirs, transmission lines and facilities that emit carbon dioxide.

12
13 **Public Health and Safety Standards for Wind Energy Facilities: OAR 345-024-0010**

14 *To issue a site certificate for a proposed wind energy facility, the Council must find that the*
15 *applicant:*

16
17 *(1) Can design, construct and operate the facility to exclude members of the public from*
18 *close proximity to the turbine blades and electrical equipment.*

19
20 *(2) Can design, construct and operate the facility to preclude structural failure of the*
21 *tower or blades that could endanger the public safety and to have adequate safety*
22 *devices and testing procedures designed to warn of impending failure and to minimize*
23 *the consequences of such failure*

24
25 **Findings of Fact**

26
27 In the *Final Order on the Application*, the Council found that the certificate holder could design,
28 construct and operate the Facility to exclude members of the public from close proximity to the
29 turbine blades and electrical equipment. The Council further found that the certificate holder
30 could design, construct and operate the Facility to preclude structural failure of the tower or
31 blades that could endanger public safety, and to have adequate safety devices and testing
32 procedures designed to warn of impending failure and to minimize the consequences of such
33 failure.⁵⁸

34
35 In the requested amendment, the certificate holder seeks to extend the construction deadlines
36 and reduce the minimum blade tip clearance required under Condition 27(d). Approval of the
37 amendment would not change the facts or circumstances upon which the Council relied in
38 making findings regarding public health and safety at the Facility site.

39
40

58 To ensure safety and compliance, the Council incorporated the following conditions into the site certificate relating to public health and safety: 58, 23, 79, 67, 65, 12, 52, 69, 68, 66, 27, 42, 64. *Final Order on Application* at 79.

1 **Conclusion**

2
3 Based on the reasoning above, the Council concludes that the Facility, as amended, complies
4 with the Council's Public Health and Safety Standards for Wind Energy Facilities.
5

6 **Siting Standards for Wind Energy Facilities: OAR 345-024-0015**

7
8 *To issue a site certificate for a proposed wind energy facility, the Council must find that the*
9 *applicant can design and construct the facility to reduce cumulative adverse environmental*
10 *effects in the vicinity by practicable measures including, but not limited to, the following:*
11

12 *(1) Using existing roads to provide access to the facility site, or if new roads are needed,*
13 *minimizing the amount of land used for new roads and locating them to reduce adverse*
14 *environmental impacts.*
15

16 *(2) Using underground transmission lines and combining transmission routes.*
17

18 *(3) Connecting the facility to existing substations, or if new substations are needed,*
19 *minimizing the number of new substations.*
20

21 *(4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife*
22 *in areas near turbines or electrical equipment.*
23

24 *(5) Designing the components of the facility to minimize adverse visual features.*
25

26 *(6) Using the minimum lighting necessary for safety and security purposes and using*
27 *techniques to prevent casting glare from the site, except as otherwise required by the*
28 *Federal Aviation Administration or the Oregon Department of Aviation*
29

30 **Findings of Fact**

31
32 In the *Final Order on the Application*, the Council found that the proposed design and
33 construction of the Facility would reduce cumulative adverse environmental effects in the
34 vicinity by practicable measures in accordance with the requirements of OAR 345-024-0015.⁵⁹
35

36 The requested amendment would extend the construction deadlines and reduce the minimum
37 blade tip clearance in Condition 27(d). Approval of the amendment would not substantially
38 change the cumulative effects of the components authorized for construction within the
39 previously approved site boundary. Approval of the amendment would not change the total
40 number of wind turbines or the authorized blade tip height of wind turbines. To address
41 cumulative impacts the Council included Conditions 39, 95, 68, 57, 99, and 102 in the Site

⁵⁹ *Final Order on the Application* at 85.

1 Certificate. The requested amendment does not affect the certificate holder's responsibility to
2 comply with the above listed conditions.

3
4 **Conclusion**

5
6 The Council concludes that the Facility, as amended, complies with the Council's siting
7 Standards for Wind Energy Facilities.

8
9 **Siting Standards for Transmission Lines: OAR 345-0240-0090**

10
11 *To issue a site certificate for a facility that includes any transmission line under Council*
12 *jurisdiction, the Council must find that the applicant:*

13
14 *(1) Can design, construct and operate the proposed transmission line so that alternating*
15 *current electric fields do not exceed 9 kV per meter at one meter above the ground*
16 *surface in areas accessible to the public;*

17
18 *(2) Can design, construct and operate the proposed transmission line so that induced*
19 *currents resulting from the transmission line and related or supporting facilities will be*
20 *as low as reasonably achievable*

21
22 **Findings of Fact**

23
24 These standards address safety hazards associated with electric fields around transmission
25 lines.⁶⁰ Section (1) of OAR 345-024-0090 sets a limit for electric fields from transmission lines of
26 not more than 9 kV per meter at one meter above the ground surface in areas that are
27 accessible to the public. Section (2) requires measures to reduce the risk of induced current.

28
29 In the *Final Order on the Application*, the Council found that the certificate holder could
30 construct and operate the proposed transmission lines so that alternating current electric fields
31 do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the
32 public. The Council further found that the certificate holder could design, construct and operate
33 the proposed transmission lines so that induced currents resulting from the transmission lines
34 will be as low as reasonably achievable. Therefore, the Council concluded that the Facility
35 complied with the Siting Standards for Transmission Lines. The Council's previous findings are
36 incorporated by this reference.⁶¹

37
38 Approval of the requested amendment would not change the facts or circumstances upon
39 which the Council relied in making findings regarding compliance with the standards in OAR
40 345-024-0090. The amendment request seeks to extend the construction deadlines and reduce

⁶⁰ Magnetic field effects are addressed below at page 139.

⁶¹ *Final Order on the Application* at 88.

1 the minimum blade tip clearance required under Condition 27(d), which would not impact the
2 Facility's transmission lines.

3
4 **Conclusion**

5
6 The Council finds that the Facility, as amended, complies with the Council's Siting Standards for
7 Transmission Lines.

8
9 **III.B. Other Applicable Regulatory Requirements Under Council Jurisdiction**

10
11 Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-022-
12 0000), the Council must determine whether the proposed Facility complies with "all other
13 Oregon statutes and administrative rules..., as applicable to the issuance of a site certificate for
14 the proposed facility." In evaluating this amendment, the Council must determine whether the
15 proposed amendment affects any finding made by the Council in earlier orders.⁶² This section
16 addresses the applicable Oregon statutes and administrative rules that are not otherwise
17 addressed, including noise control regulations, regulations for removal or fill of material
18 affecting waters of the state, regulations for appropriating ground water, and the Council's
19 statutory authority to consider protection of public health and safety.

20
21 **III.B.1. Noise Control Regulations: OAR 340-035-0035**

22
23 *(1) Standards and Regulations:*

24 ***

25 *(b) New Noise Sources:*

26
27 *(A) New Sources Located on Previously Used Sites. No person owning or controlling a*
28 *new industrial or commercial noise source located on a previously used industrial or*
29 *commercial site shall cause or permit the operation of that noise source if the*
30 *statistical noise levels generated by that new source and measured at an appropriate*
31 *measurement point, specified in subsection (3)(b) of this rule, exceed the levels*
32 *specified in Table 8, except as otherwise provided in these rules. For noise levels*
33 *generated by a wind energy facility including wind turbines of any size and any*
34 *associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.*

35 *****

36 **Findings of Fact**

37
38 The noise control regulations provided by OAR 340-035-0035 apply to noise associated with
39 operation of the Facility.

40

⁶² OAR 345-027-0070(10)(c)

1 In the *Final Order on the Application*, the Council concluded that the Facility, subject to the Site
2 Certificate conditions, would comply with the applicable State noise control regulations.⁶³ As
3 the final design configuration was not yet known, the Council's analysis was preliminary. To
4 represent the range of turbines that could be used at the proposed Facility, the certificate
5 holder provided total and octave band sound power level data for two turbine types: GE Energy
6 1.5-MW turbine and the Vestas V100 3.0-MW turbine. To ensure that the Facility as-built would
7 comply with the noise regulations, the Council adopted Condition 107 requiring the certificate
8 holder to provide information to the Department about the turbines selected and the final
9 design layout before beginning construction. The condition requires the certificate holder to
10 demonstrate that the final design layout of the facility complies with the applicable noise
11 control regulations and obtain, if necessary, noise easements, as specified in the applicable
12 noise control regulations. Further, the Council adopted Condition 108, requiring the certificate
13 holder to notify the Department of any complaints received about noise from the Facility as
14 well as the actions taken to address them.⁶⁴ The Council's previous findings are incorporated by
15 this reference.

16
17 The requested extension of the construction extension deadlines and reduction of the
18 minimum blade tip clearance would not increase the total number of turbines or the total
19 megawatts of the Facility.⁶⁵ Therefore, the amendment would not affect the Council's previous
20 findings regarding noise. The amendment does not impact the Facility's obligations under the
21 site certificate conditions.

22 23 Conclusion

24
25 For the reasons discussed above, the Council concludes that the Facility, as amended, complies
26 with the applicable noise control regulations in OAR 340-035-0035.

27 28 III.B.2. Removal-Fill

29
30 The Oregon Removal-Fill Law (ORS 196.800 through .990) and DSL regulations (OAR 141-085-
31 0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of material
32 is removed, filled or altered within any "waters of the state" at the proposed site.⁶⁶ The U.S.
33 Army Corps of Engineers administers Section 404 of the Clean Water Act, which regulates the

⁶³ *Final Order on the Application* at 134.

⁶⁴ Under Condition 3 of the Site Certificate, the certificate holder is required to operate the Facility in accordance with all applicable state laws and administrative rules. *Final Order on the Application* at 133. Under OAR 340-035-0035(4)(a), DEQ has authority to require the owner of an operating noise source to monitor and record the statistical noise levels upon written notification. The Council has the authority to act in place of DEQ to enforce this provision to verify that the certificate holder is operating the Facility in compliance with the noise control regulations.

⁶⁵ The certificate holder submitted evidence into the record with its joint response regarding wind turbines and low frequency of inaudible sound. However, ODEQ noise rules currently do not include guidelines addressing low frequency sound.

⁶⁶ OAR 141-085-0010(225) defines "Waters of this State." The term includes wetlands and certain other water bodies.

1 discharge of fill into waters of the United States, and determines whether a Nationwide or
2 Individual Section 404 fill permit is required.

3
4 **Findings of Fact**

5
6 In the *Final Order on the Application*, the Council found that a Removal/Fill Permit was not
7 needed for construction of the Facility.⁶⁷ Those findings are incorporated by this reference.

8
9 The requested construction extension and minimum blade tip clearance reduction would not
10 affect any areas that were not previously addressed by the delineation report on the wetlands
11 and waters within the analysis area.

12
13 **Conclusion**

14
15 The Council concludes that no removal/fill permit would be required for the Facility, as
16 amended.

17
18 **III.B.3. Water Rights**

19
20 Under ORS Chapters 537 and 540 and OAR Chapter 690, OWRD administers water rights for
21 appropriation and use of the water resources of the state. Under OAR 345-022-0000(1), the
22 Council must determine whether the proposed Facility would comply with these statutes and
23 administrative rules.

24
25 **Findings of Fact**

26
27 In the *Final Order on the Application*, the Council concluded that the Facility, subject to the site
28 certificate would comply with the Ground Water Act of 1955 and the rules of the Water
29 Resources Department.⁶⁸ The amendment, as requested, would not impact the Facility's water
30 use or the Council's previous findings.

31
32 **Conclusion**

33
34 The Council concludes that the Facility, as amended, complies with the applicable water rights
35 regulations.

36
37 **III.B.4. Public Health and Safety**

38
39 The Council is charged with ensuring that the "siting, construction, and operation of energy
40 facilities shall be accomplished in a manner consistent with the protection of public health and

⁶⁷ *Final Order on the Application* at 136.

⁶⁸ *Id.* at 137.

1 safety ..."⁶⁹ The Facility siting statutes further provide that "the site certificate ... shall contain
2 conditions for the protection of public health and safety."⁷⁰

3 4 **Findings of Fact**

5
6 The Council's Public Health and Safety Standards for wind energy facilities are discussed above .
7 This section addresses the issues of fire protection, magnetic fields and coordination with the
8 Oregon Public Utility Commission and the Boardman Military Operating Area.

9 10 **(1) Fire Protection**

11
12 In the *Final Order on the Application*, the Council made findings and adopted conditions
13 regarding fire prevention and response for the Facility. Applicable conditions include Conditions
14 57, 58, 59, 60, 61, 62, 63.⁷¹ The proposed amendment would not affect the Council's previous
15 findings.

16 17 **(2) Magnetic Fields**

18
19 Electric transmission lines create both electric and magnetic fields. The electric fields associated
20 with the proposed transmission lines are addressed above at page 43.

21
22 In the *Final Order on the Application*, the Council noted that the it has not found sufficient
23 information upon which to set health-based limits for exposure to magnetic fields, but that
24 nevertheless, it encourages applicants to propose and implement low-cost ways to reduce or
25 manage public exposure to magnetic fields from transmission lines under the Council's
26 jurisdiction. Therefore, the Council adopted condition 89 which addresses reasonable steps to
27 reduce or manage human exposure to electric and magnetic fields.⁷² The requested
28 amendment does not affect the Council's previous findings or conditions.

29 30 **(3) Coordination with the PUC**

31
32 The Oregon Public Utility Commission Safety and Reliability Section (PUC) has requested that
33 the Council ensure that certificate holders coordinate with PUC staff on the design and
34 specifications of electrical transmission lines and natural gas pipelines. The PUC has explained
35 that others in the past have made inadvertent, but costly, mistakes in the design and
36 specifications of power lines and pipelines that could have easily been corrected early if the
37 developer had consulted with the PUC staff responsible for the safety codes and standards.
38 Condition 90 requires the certificate holder to coordinate the design of electric transmission
39 lines with the PUC. The requested amendment would not affect the Council's previous findings.

⁶⁹ ORS 469.310.

⁷⁰ ORS 469.401(2).

⁷¹ *Final Order on the Application* at 139.

⁷² *Id.* at 140.

1 **Conclusion**

2
3 Based on the findings discussed above and subject to the recommended Site Certificate
4 conditions, the Council concludes that the Facility, as amended, complies with the
5 requirements to protect public health and safety.
6

7 **III.C. Review of the Transfer Request**

8
9 PGE submitted the written transfer request to the Department and included the required
10 documents pursuant to OAR 345-021-0010(1)(a),(d),(f) and (m).⁷³ In addition, PGE certified that
11 it agrees to abide by all the terms and conditions of the Site Certificate currently in effect and
12 terms and conditions that will result from this amendment request.⁷⁴
13

14 Under OAR 345-027-0100(8), as discussed above in Section II.E.2., the Council may approve the
15 transfer request if the Council finds that the transferee complies with the Council's
16 Organizational Expertise Standard, the Retirement and Financial Assurance Standard and, if
17 applicable, the Monetary Path Payment Requirement under the Carbon Dioxide Emissions
18 standards. Because the Facility is a wind facility, the Monetary Path Payment Requirement is
19 not applicable to this transfer request. The transferee's compliance with the standards is
20 discussed below.
21

22 **III.C.1. Organizational Expertise: OAR 345-022-0010**

23
24 *(1) To issue a site certificate, the Council must find that the applicant has the*
25 *organizational expertise to construct, operate and retire the proposed facility in*
26 *compliance with Council standards and conditions of the site certificate. To conclude that*
27 *the applicant has this expertise, the Council must find that the applicant has*
28 *demonstrated the ability to design, construct and operate the proposed facility in*
29 *compliance with site certificate conditions and in a manner that protects public health*
30 *and safety and has demonstrated the ability to restore the site to a useful, non-*
31 *hazardous condition. The Council may consider the applicant's experience, the*
32 *applicant's access to technical expertise and the applicant's past performance in*
33 *constructing, operating and retiring other facilities, including, but not limited to, the*
34 *number and severity of regulatory citations issued to the applicant.*
35

36 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
37 *an applicant has organizational, managerial and technical expertise, if the applicant has*
38 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
39 *operate the facility according to that program.*
40

⁷³ Request for Amendment 1-Exhibit 5 (a)(d)(f)(m).

⁷⁴ Request for Amendment 1-Attachment 6.

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

8
9 (4) If the applicant relies on a permit or approval issued to a third party and the third
10 party does not have the necessary permit or approval at the time the Council issues the
11 site certificate, the Council may issue the site certificate subject to the condition that the
12 certificate holder shall not commence construction or operation as appropriate until the
13 third party has obtained the necessary permit or approval and the applicant has a
14 contract or other arrangement for access to the resource or service secured by that
15 permit or approval.

16 17 **Findings of Fact**

18
19 Subsections (1) and (2) of the Council's Organizational Expertise Standard require that an
20 applicant, or in this case, the transferee, demonstrate the ability to design, construct, and
21 operate a facility in compliance with Council standards and all site certificate conditions, as well
22 as to restore the site to a useful, non-hazardous condition. The Council may consider the
23 applicant's experience and the applicant's past performance in constructing, operating and
24 retiring other facilities. Subsections (3) and (4) address third-party permits- those permits which
25 the certificate holder relies on a contractor or other third party to obtain.

26
27 PGE has significant experience in constructing and supervising the construction of generation
28 projects. Between 2007 and 2010 PGE completed construction of three phases of the Biglow
29 Canyon Wind Farm, consisting of a total of 217 turbines and located in Sherman County. The
30 Biglow Canyon Wind Farm was authorized by the Council, and, consequently the Council found
31 PGE to satisfy the Organizational Expertise standard.⁷⁵ In 2007, PGE completed the construction
32 of the 406-megawatt Port Westward combined cycle gas turbine facility in Clatskanie, Oregon.
33 The Council granted PGE the Site Certificate for Port Westward in 2002.⁷⁶ In July 2001, PGE
34 completed the construction of a new 24.9-MW simple cycle gas turbine project located at the
35 Beaver Generation Facility, located in Clatskanie. In 1995, PGE placed into service Coyote
36 Springs Unit 1, a 240-MW combined cycle combustion turbine located in Boardman after

⁷⁵ Final Order and Site Certificate for the Biglow Canyon Wind Farm (June 30, 2006), Final Order on Amendment #1 and First Amended Site Certificate for the Biglow Canyon Wind Farm, (Nov. 3, 2006), Final Order on Amendment #2 and Second Amended Site Certificate for the Biglow Canyon Wind Farm (May 10, 2007), and Final Order on Amendment #3 and Third Amended Site Certificate for the Biglow Canyon Wind Farm (October 31, 2008).

⁷⁶ Site Certificate for the Port Westward Generating Project (November 2002), as most recently amended on August 19, 2011 in the Eighth Amended Site Certificate.

1 receiving Council authorization.⁷⁷ PGE prepared and negotiated all the primary contracts for
2 the design and construction of each of the projects listed above; PGE supervised the
3 construction of each, and performed many of the engineering functions in support of the
4 design and construction work. Based upon the foregoing, it is evident PGE has extensive
5 engineering and project management experience associated with generation projects.
6

7 Further, PGE has not received a penalty or fine for regulatory violations at Biglow Canyon
8 Wind Farm, nor has any regulatory agency levied a penalty or fine against the Coyote Springs
9 Power Plant, Beaver Facility or Port Westward Facility due to the construction, operation, or
10 maintenance of the facilities.

11
12 Based on the facts above, the Council finds that the transferee has demonstrated the ability to
13 design, construct and operate the proposed facility in compliance with Council standards, all
14 site certificate conditions and in a manner that protects public health and safety.
15

16 With regard to third-party permits, the Council determined that third-party permits would be
17 necessary for construction of the Facility.⁷⁸ To ensure compliance with said Council standards,
18 the Council adopted Condition 29 in the Site Certificate requiring the certificate holder to
19 provide confirmation that the third parties have in fact obtained the necessary permits and the
20 certificate holder has a contract or other arrangement with the third parties for access to the
21 resources secured by the permits.
22

23 PGE, in the transfer request, noted that even though it has yet to identify a prime contractor to
24 construct the Facility, its selection criteria will focus only on qualified engineers, manufacturers
25 and contractors who are experienced in the wind industry. Additionally, as discussed earlier,
26 PGE has certified that, should the transfer occur, as the certificate holder it will abide by all
27 terms and conditions of the site certificate currently in the effect and all terms and conditions
28 that will result from Amendment 1.⁷⁹
29

30 Considering what PGE's obligations would be under the site certificate and its experience in
31 successfully developing other generation facilities in Oregon, the Council concludes that the
32 transferee has a reasonable likelihood of entering into a contractual or other arrangement with
33 third parties for access to the resources secured by the third-party permits.
34

35 **Conclusion**

36 For the reasons discussed above, the Council finds that the transferee satisfies the Council's
37 Organizational Expertise standard.
38

39 **III.C.2. Retirement and Financial Assurance: OAR 345-022-0050** 40

⁷⁷ Fourth Amended Site Certificate, incorporating amendments 1 through 9, approved December 2, 2004.

⁷⁸ *Final Order on the Application* at 15.

⁷⁹ Request for Amendment 1-Attachment 6

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

2
3 (1) The site, taking into account mitigation, can be restored adequately to a useful, non-
4 hazardous condition following permanent cessation of construction or operation of the
5 facility.

6
7 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a
8 form and amount satisfactory to the Council to restore the site to a useful, non-
9 hazardous condition.

10
11 **Findings of Fact**

12
13 The Council must find that the site can be restored to a useful, non-hazardous condition
14 following permanent cessation, and that the transferee has a reasonable likelihood of obtaining
15 a bond or comparable security, satisfactory to the Council, in an amount adequate to restore
16 the site.

17
18 In the *Final Order on the Application*, the Council found that the site could be restored to a
19 useful, non-hazardous condition.⁸⁰ Those findings are incorporated by this reference. To ensure
20 the certificate holder's obligations, the Council adopted Conditions 8, 9, 32 and 33 in the Site
21 Certificate. Pursuant to these conditions, the certificate holder must submit a final retirement
22 plan for approval by the Council (Condition 9), and the retirement plan must describe the
23 activities necessary to restore the site a useful, non-hazardous condition. Condition 8 and 32
24 require the certificate holder to maintain a bond or letter of credit that ensures funds are
25 available to the Council to restore the site if the certificate holder does not retire the Facility as
26 required by Condition 9. Lastly, Condition 33 relates to the Council's requirements should an
27 applicant elect to use a bond. As discussed earlier, PGE certified, should the transfer occur, that
28 as the certificate holder it will abide by all terms and conditions of the Site Certificate currently
29 in the effect and all terms and conditions that will result from Amendment 1. Therefore, PGE
30 would be bound by the conditions of the Site Certificate, including the conditions regarding site
31 restoration.

32
33 OAR 345-022-0050(2) requires the Council to decide whether the applicant (or transferee in this
34 case) has a reasonable likelihood of obtaining a bond or letter of credit, in a form and amount
35 satisfactory to the Council, to restore the site to a useful, non-hazardous condition. In the *Final*
36 *Order on the Application*, the Council determined that the value of the financial assurance bond
37 or letter of credit for restoring the site would not exceed \$21.511 million (3rd Quarter 2010
38 dollars).⁸¹ On March 11, 2013, PGE provided a letter from Wells Fargo in which Wells Fargo
39 stated that "based upon PGE's current credit profile, and subject to the terms of the facility,
40 Wells Fargo, as issuing lender, would be willing to furnish a letter of credit in an amount up to

⁸⁰ *Final Order on the Application* at 19.

⁸¹ This amount is annually adjusted per Condition 32.

1 \$21,511,000 for a period not to exceed the maturity of the facility...for the purpose of ensuring
2 the Company's obligation that the site of the Montague Wind Power Facility can be restored to
3 a useful, non-hazardous condition."⁸² The letter does not constitute a firm commitment from
4 Wells Fargo to issue the letter of credit, but it is evidence that PGE could obtain the necessary
5 letter of credit for the Facility.

6
7 For the reasons discussed above, the Council finds that the Facility site can be restored to a
8 useful, non-hazardous condition following permanent cessation of construction, and that the
9 transferee has demonstrated a reasonable likelihood of obtaining a bond or letter of credit,
10 satisfactory to the Council, in amounts adequate to restore the site to a useful, non-hazardous
11 condition.

12 13 Conclusion

14
15 The Council concludes that the transferee satisfies the Council's Retirement and Financial
16 Assurance standard.

17 18 Council Determination Regarding the Transfer

19
20 Based on the foregoing, the Council finds that the PGE complies with the standards described in
21 OAR 345-022-0010 and OAR 345-022-0050, and pursuant to the terms of the asset purchase
22 agreement, the transferee will be entitled to possession or control of the site should the
23 transfer occur. Therefore, the Council approves the transfer.

24
25 However, because closing has yet to occur, the Council will issue the amended Site Certificate
26 to Montague with a condition of approval requiring the transfer to PGE to occur within 18
27 months of the effective date of the amended Site Certificate. If the closing has not occurred
28 within the 18-month period, then PGE must resubmit the transfer request to the Council for
29 reconsideration as the information previously relied upon in recommending approval of the
30 transfer may no longer be relevant. Additionally, the Council includes a condition requiring the
31 transferee to submit a copy of the executed site certificate and documentation of the asset
32 purchase agreement within 7 days of closing to the Council. This ensures prompt notification to
33 the Council of the transfer and ensures all appropriate documentation is secured. The
34 condition language is included in Attachment A, Conditions 113-115.

35 36 **III.D. Requirements that are not under Council Jurisdiction**

37 38 III.D.1. Federally-Delegated Programs

39
40 The Council does not have jurisdiction for determining compliance with statutes and rules for
41 which the federal government has delegated the decision on compliance to a state agency

⁸² Letter from Wells Fargo, Aaron Lemke, Assistant Vice President (March 11, 2013).

1 other than the Council. Nevertheless, the Council may rely on the determinations of compliance
2 and the conditions in the federally-delegated permits issued by these state agencies in deciding
3 whether the proposed facility meets other standards and requirements under its jurisdiction.
4

5 III.D.2. Requirements that do not relate to Siting

6

7 Under ORS 469.401(4) the council does not have jurisdiction for determining compliance with
8 state regulatory programs that address design-specific construction or operating standards and
9 practices that do not relate to specific siting requirements of the proposed facility.
10

11 IV. GENERAL APPLICATION OF CONDITIONS

12

13 The conditions referenced in this proposed order include conditions that are specifically
14 required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023
15 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
16 Division 26 (Construction and Operation Rules for Facilities). The conditions referenced in this
17 final order include conditions based on representations in the request for amendment and the
18 supporting record. The Council deems these representations to be binding commitments made
19 by the certificate holder. This final order also includes conditions that the Council finds
20 necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and
21 24, or to protect public health and safety.
22

23 In addition to all other conditions referenced or included in this final order, the certificate
24 holder is subject to all conditions and requirements contained in the rules of the Council and in
25 local ordinances and state law in effect on the date the amended site certificate is executed.
26 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety
27 or the environment that requires application of later-adopted laws or rules, the Council may
28 require compliance with such later-adopted laws or rules.
29

30 The Council recognizes that many specific tasks related to the design, construction, operation
31 and retirement of the facility will be undertaken by the certificate holder' agents or contractors.
32 Nevertheless, the certificate holder is responsible for ensuring that all agents and contractors
33 comply with all provisions of the Site Certificate.
34

35 V. GENERAL CONCLUSION AND FINAL ORDER

36

37 The proposed amendment would (1) extend the construction and completion deadlines; and (2)
38 reduce the minimum blade tip clearance required in Condition 27(d) from 41 meters above
39 ground to 20 meters above ground. In addition, the proposed transfer would authorize the
40 transfer the amended Site Certificate from Montague Wind Power, LLC to Portland General
41 Electric subject to terms and conditions set forth herein.
42

1 Based on the findings and conclusions included in this order, the Council makes the following
2 findings:

3
4 (1) The proposed Amendment 1 complies with the requirements of the Oregon Energy
5 Facility Siting statutes, ORS 469.300 to ORS 469.570 and ORS 469.590 to ORS 469.619.

6
7 (2) The proposed Amendment 1 complies with the applicable standards adopted by the
8 Council pursuant to ORS 469.501.

9
10 (3) The proposed Amendment 1 complies with all other Oregon statutes and administrative
11 rules applicable to the amendment of the site certificate for the Montague Wind Power
12 Facility that are within the Council's jurisdiction.

13
14 (4) The transferee, Portland General Electric, complies with the standards described in OAR
15 345-022-0010 and OAR 345-022-0050 and, upon completion of a transfer agreement with
16 Montague Wind Power Facility, LLC will be lawfully entitled to possession or control of
17 Montague as described in the Site Certificate as amended by this order.

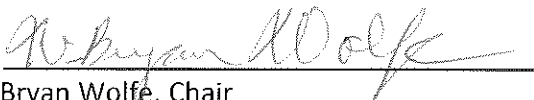
18
19 Accordingly, the Council finds that the proposed amendment complies with the General
20 Standard of Review (OAR 345-022-0000). The Council finds, based on a preponderance of the
21 evidence on the record, that the Site Certificate may be amended and transferred as requested
22 by the certificate holder and transferee, subject to the revisions set forth above.

23
24 **Final Order**

25
26 The Council approves Amendment #1 and issues an amended site certificate for the Montague
27 Wind Power Facility, subject to the terms and conditions set forth above. In addition, the
28 Council approves the transfer of the First Amended Site certificate to PGE subject to the terms
29 and conditions set forth above.

30
31 Issued this 21st day of June, 2013

32
33 Oregon Energy Facility Siting Council

34 By: 
35
36 W. Bryan Wolfe, Chair
37 Energy Facility Siting Council

38
39 **Notice of the Right to Appeal**

40 *You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403.*
41 *To appeal you must file a petition for judicial review with the Supreme Court within 60 days*
42 *from the day this order was served on you. If this order was personally delivered to you, the date*
43 *of service is the date you received this order. If this order was mailed to you, the date of service*

- 1 *is the date it was mailed, not the date you received it. If you do not file a petition for judicial*
- 2 *review within the 60-day time period, you lose your right to appeal.*

Attachment A

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

**Site Certificate
for the
Montague Wind Power Facility**

June 21, 2013

~~September 10, 2010~~

The Oregon Energy Facility Siting Council

SITE CERTIFICATE

FOR THE MONTAGUE WIND POWER FACILITY

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this site certificate for the Montague Wind Power Facility (the facility) in the manner authorized under ORS Chapter 469. This site certificate is a binding agreement between the State of Oregon (State), acting through the Council, and Montague Wind Power Facility LLC (certificate holder) authorizing the certificate holder to construct and operate the facility in Gilliam County, Oregon. [Amendment #1]

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's Final Order on the Application for the Montague Wind Power Facility issued on September 10, 2010 (hereafter, Final Order on the Application), and (b) the Final Order on Amendment #1 issued on June 21, 2013. In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) this First Amended Site Certificate, (2) the Final Order on Amendment #1, (3) the Final Order on the Application, and (4) the record of the proceedings that led to the Final Order on the Application and the Final Order on Amendment #1~~reference to the Final Order on the Application for the Montague Wind Power Facility.~~ [Amendment #1]

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

II. SITE CERTIFICATION

1. To the extent authorized by state law and subject to the conditions set forth herein, the State authorizes the certificate holder to construct, operate and retire a wind energy facility, together with certain related or supporting facilities, at the site in Gilliam County, Oregon, as described in Section III of this site certificate. ORS 469.401(1).
2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in effect on the date that termination is sought or until the site certificate is revoked under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. ORS 469.401(1).
3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the ~~Council's Final Order on the Application for the Montague Wind Power Facility and Amendment #1~~. Such matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. 469.503(3). [Amendment #1]

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

III. DESCRIPTION

1. The Facility

(a) The Energy Facility

27 The energy facility is an electric power generating plant with an average electric generating
28 capacity of up to 134.7 megawatts and a peak generating capacity of not more than 404
29 megawatts that produces power from wind energy. The facility consists of not more than 269
30 wind turbines. The maximum peak generating capacity of each turbine is not more than 3.0
31 megawatts. The energy facility is described further in the *Final Order on the Application for the*
32 *Montague Wind Power Facility and Amendment #1.*

(b) Related or Supporting Facilities

33 The facility includes the following related or supporting facilities described below and in greater
34 detail in the *Final Order on the Application for the Montague Wind Power Facility and*
35 *Amendment #1:*

- 36 • Power collection system

- Control system
- Substations and 230-kV transmission lines
- Meteorological towers
- Operations and maintenance facilities
- Access roads
- Public roadway modifications
- Temporary construction areas

Power Collection System

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. To the extent practicable, the collection system is installed underground at a depth of at least three feet. Not more than 27 miles of the collector system is installed aboveground.

Control System

A fiber optic communications network links the wind turbines to a central computer at the O&M buildings. A Supervisory, Control and Data Acquisition (SCADA) system collects operating and performance data from each wind turbine and from the project as a whole and allows remote operation of the wind turbines.

Substations and 230-kV Transmission Lines

The facility includes two collector substations. An aboveground, single-circuit 230-kV transmission line connects the western substation to the central substation. An aboveground, single-circuit 230-kV transmission line connects the central substation to the 500-kV Slatt-Buckley transmission line owned by the Bonneville Power Administration (BPA) at the Slatt substation.

Meteorological Towers

The facility includes up to eight permanent meteorological towers.

Operations and Maintenance Facilities

The facility includes one or two operations and maintenance (O&M) facilities. An on-site well at each O&M facility supplies water for use during facility operation. Sewage is discharged to an on-site septic system.

Access Roads

The facility includes access roads to provide access to the turbine strings.

Public Roadway Modifications

The certificate holder may construct improvements to existing state and county public roads that are necessary for construction of the facility. These modifications would be confined to the existing road rights-of-way and would be undertaken with the approval of the Gilliam County Road Department or the Oregon Department of Transportation, depending on the location of the improvement.

Temporary Construction Areas

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

2. Location of the Proposed Facility

The facility is located south of Arlington, in Gilliam County, Oregon. The facility is located on private land subject to easements or lease agreements with landowners.

IV. CONDITIONS REQUIRED BY COUNCIL RULES

This section lists conditions required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) and OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities). These conditions should be read together with the specific facility conditions listed in Section V to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, and to protect the public health and safety. In these conditions the definitions in OAR 345-001-0010 apply.

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

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

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

1 OAR 345-027-0020(1): The Council shall not change the conditions of the site certificate except as provided for in OAR Chapter 345, Division 27.

2 OAR 345-027-0020(2): The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility.

3 OAR 345-027-0020(3): The certificate holder shall design, construct, operate and retire the facility:

(a) Substantially as described in the site certificate;

(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and

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(c) In compliance with all applicable permit requirements of other state agencies.

4 OAR 345-027-0020(4): The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate. *(See Conditions 24 and 25.)*

5 OAR 345-027-0020(5): Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:

(a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of the transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site; or

(b) The certificate holder would construct and operate part of a wind energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.

6 OAR 345-027-0020(6): If the Council requires mitigation based on an affirmative finding under any standards of Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected state agencies and local governments designated by the Council and shall develop specific mitigation plans consistent with Council findings under the relevant standards. The certificate holder must submit the mitigation plans to the Department and receive Department approval before beginning construction or, as appropriate, operation of the facility.

7 OAR 345-027-0020(7): The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

8 OAR 345-027-0020(8): Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, 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 certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility. *(See Condition 32.)*

9 OAR 345-027-0020(9): The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore

the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

10 OAR 345-027-0020(10): The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.

11 OAR 345-027-0020(11): Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.

12 OAR 345-027-0020(12): The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and subsidence.

13 OAR 345-027-0020(13): The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division and to propose mitigation actions.

14 OAR 345-027-0020(14): The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

15 OAR 345-027-0020(15): Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.

16 OAR 345-027-0020(16): If the Council finds that the certificate holder *has* permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, *as* described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in OAR

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

8 17 OAR 345-027-0023(4): If the facility includes any transmission line under Council
9 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 OAR 345-027-0023(5): If the proposed energy facility is a pipeline or a transmission line or
18 has, as a related or supporting facility, a pipeline or transmission line, the Council shall
19 specify an approved corridor in the site certificate and shall allow the certificate holder to
20 construct the pipeline or transmission line anywhere within the corridor, subject to the
21 conditions of the site certificate. If the applicant has analyzed more than one corridor in its
22 application for a site certificate, the Council may, subject to the Council's standards,
23 approve more than one corridor.

24 19 OAR 345-027-0028: The following general monitoring conditions apply:

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

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

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

38 (d) If the certificate holder becomes aware of a significant environmental change or
39 impact attributable to the facility, the certificate holder shall, as soon as possible, submit a
40 written report to the Department describing the impact on the facility and any affected
41 site certificate conditions

42 20 OAR 345-026-0048: Following receipt of the site certificate or an amended site certificate,
43 the certificate holder shall implement a plan that verifies compliance with all site

1 certificate terms and conditions and applicable statutes and rules. As a part of the
2 compliance plan, to verify compliance with the requirement to begin construction by the
3 date specified in the site certificate, the certificate holder shall report promptly to the
4 Department of Energy when construction begins. Construction is defined in OAR
5 345-001-0010. In reporting the beginning of construction, the certificate holder shall
6 describe all work on the site performed before beginning construction, including work
7 performed before the Council issued the site certificate, and shall state the cost of that
8 work. For the purpose of this exhibit, "work on the site" means any work within a site or
9 corridor, other than surveying, exploration or other activities to define or characterize the
10 site or corridor. The certificate holder shall document the compliance plan and maintain it
11 for inspection by the Department or the Council.

12 21 OAR 345-026-0080: The certificate holder shall report according to the following
13 requirements:

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

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

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

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

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

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

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

43 (iii) Fuel Use: For thermal power plants:

(A) The efficiency with which the power plant converts fuel into electric energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited, the certificate holder shall calculate efficiency using the same formula and assumptions, but using actual data; and

(B) The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).

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

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

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

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

(viii) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of the carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

22 OAR 345-026-0105: The certificate holder and the Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the Department.

23 OAR 345-026-0170: The certificate holder shall notify the Department of Energy within 72 hours of any occurrence involving the facility if:

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

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

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

V. SPECIFIC FACILITY CONDITIONS

The conditions listed in this section include conditions based on representations in the site certificate application and supporting record. The Council deems these representations to be

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1 binding commitments made by the applicant. These conditions are required under OAR
2 345-027-0020(10). The certificate holder must comply with these conditions in addition to the
3 conditions listed in Section IV. This section includes other specific facility conditions the Council
4 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
5 22 and 24, and to protect public health and safety. For conditions that require subsequent
6 review and approval of a future action, ORS 469.402 authorizes the Council to delegate the
7 future review and approval to the Department if, in the Council's discretion, the delegation is
8 warranted under the circumstances of the case.

1. Certificate Administration Conditions

9 24 The certificate holder shall begin construction of the facility by September 14, 2015~~within~~
10 ~~three years after the effective date of the site certificate.~~ Under OAR 345-015-0085(9), a
11 site certificate is effective upon execution by the Council Chair and the applicant. The
12 Council may grant an extension of the deadline to begin construction in accordance with
13 OAR 345-027-0030 or any successor rule in effect at the time the request for extension is
14 submitted. [Amendment #1]

15 25 The certificate holder shall complete construction of the facility by September 14,
16 ~~2018~~~~within six years after the effective date of the site certificate.~~ Construction is
17 complete when: (1) the facility is substantially complete as defined by the certificate
18 holder's construction contract documents, (2) acceptance testing has been satisfactorily
19 completed and (3) the energy facility is ready to begin continuous operation consistent
20 with the site certificate. The certificate holder shall promptly notify the Department of the
21 date of completion of construction. The Council may grant an extension of the deadline for
22 completing construction in accordance with OAR 345-027-0030 or any successor rule in
23 effect at the time the request for extension is submitted. [Amendment #1]

24 26 Before beginning construction of the facility, the certificate holder shall notify the
25 Department whether the turbines identified as H1, H2, H3, H4, L8, L9, L10, L11 and L12 on
26 Figure C-3a of the site certificate application will be built as part of the Montague Wind
27 Power Facility or whether the turbines will be built as part of the Leaning Juniper II Wind
28 Power Facility.

29 27 The certificate holder shall construct a facility substantially as described in the site
30 certificate and may select turbines of any type, subject to the following restrictions and
31 compliance with all other site certificate conditions. Before beginning construction, the
32 certificate holder shall provide to the Department a description of the turbine types
33 selected for the facility demonstrating compliance with this condition.

34 (a) The total number of turbines at the facility must not exceed 269 turbines.

35 (b) The combined peak generating capacity of the facility must not exceed 404
36 megawatts and the peak generating capacity of any individual turbine must not exceed 3.0
37 megawatts.

38 (c) The turbine hub height must not exceed 100 meters and the maximum blade tip
39 height must not exceed 150 meters.

40 ~~(e)(d)~~ The minimum blade tip clearance must be 20 meters above ground.

41 ~~The minimum blade tip clearance must be 41 meters above ground.~~

(d)(e) The certificate holder shall request an amendment of the site certificate to increase the combined peak generating capacity of the facility beyond 404 megawatts, to increase the number of wind turbines to more than 269 wind turbines or to install wind turbines with a hub height greater than 100 meters, a blade tip height greater than 150 meters or a blade tip clearance less than 41-20 meters above ground. [Amendment #1]

28 The certificate holder shall obtain all necessary federal, state and local permits or approvals required for construction, operation and retirement of the facility or ensure that its contractors obtain the necessary federal, state and local permits or approvals.

29 Before beginning construction, the certificate holder shall provide confirmation to the Department that the construction contractor or other third party has obtained all necessary permits or approvals and shall provide to the Department proof of agreements between the certificate holder and the third party regarding access to the resources or services secured by the permits or approvals.

30 Before beginning construction, the certificate holder shall notify the Department in advance of any work on the site that does not meet the definition of "construction" in ORS 469.300, excluding surveying, exploration or other activities to define or characterize the site, and shall provide to the Department a description of the work and evidence that its value is less than \$250,000.

31 Before beginning construction and after considering all micrositing factors, the certificate holder shall provide to the Department, to the Oregon Department of Fish and Wildlife (ODFW) and to the Planning Director of Gilliam County detailed maps of the facility site, showing the final locations where the certificate holder proposes to build facility components, and a table showing the acres of temporary and permanent habitat impact by habitat category and subtype, similar to Table 6 in the *Final Order on the Application*. The detailed maps of the facility site shall indicate the habitat categories of all areas that would be affected during construction (similar to Figures P-8a through P-8d in the site certificate application). In classifying the affected habitat into habitat categories, the certificate holder shall consult with the ODFW. The certificate holder shall not begin ground disturbance in an affected area until the habitat assessment has been approved by the Department. The Department may employ a qualified contractor to confirm the habitat assessment by on-site inspection.

32 Before beginning construction, the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either \$21.511 million (3rd Quarter 2010 dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b).

(a) The certificate holder may adjust the amount of the bond or letter of credit based on the final design configuration of the facility and turbine types selected by applying the unit costs and general costs illustrated in Table 2 in the *Final Order on the Application* and

calculating the financial assurance amount as described in that order, adjusted to the date of issuance as described in (b) and subject to approval by the Department.

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

(i) Adjust the Subtotal component of the bond or letter of credit amount (expressed in mid-2004 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency (the "Index") and using the average of the 2nd Quarter and 3rd Quarter 2004 index values (to represent mid-2004 dollars) and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the Index is no longer published, the Council shall select a comparable calculation to adjust mid-2004 dollars to present value.

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

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

(iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) and round the resulting total to the nearest \$1,000 to determine the adjusted financial assurance amount.

(c) The certificate holder shall use a form of bond or letter of credit approved by the Council.

(d) The certificate holder shall use an issuer of the bond or letter of credit approved by the Council.

(e) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council under Condition 21.

(f) The bond or letter of credit shall not be subject to revocation or reduction before retirement of the facility site.

33 If the certificate holder elects to use a bond to meet the requirements of Condition 32, the certificate holder shall ensure that the surety is obligated to comply with the requirements of applicable statutes, Council rules and this site certificate when the surety exercises any legal or contractual right it may have to assume construction, operation or retirement of the energy facility. The certificate holder shall also ensure that the surety is obligated to notify the Council that it is exercising such rights and to obtain any Council approvals required by applicable statutes, Council rules and this site certificate before the surety commences any activity to complete construction, operate or retire the energy facility.

34 Before beginning construction, the certificate holder shall notify the Department of the identity and qualifications of the major design, engineering and construction contractor(s) for the facility. The certificate holder shall select contractors that have substantial experience in the design, engineering and construction of similar facilities. The certificate holder shall report to the Department any change of major contractors.

1 35 The certificate holder shall contractually require all construction contractors and
2 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 36 To ensure compliance with all site certificate conditions during construction, the
7 certificate holder shall have a full-time, on-site assistant construction manager who is
8 qualified in environmental compliance. The certificate holder shall notify the Department
9 of the name, telephone number and e-mail address of this person.

10 37 Within 72 hours after discovery of conditions or circumstances that may violate the terms
11 or conditions of the site certificate, the certificate holder shall report the conditions or
12 circumstances to the Department.

2. Land Use Conditions

13 38 The certificate holder shall consult with area landowners and lessees during construction
14 and operation of the facility and shall implement measures to reduce or avoid any adverse
15 impacts to farm practices on surrounding lands and to avoid any increase in farming costs.

16 39 The certificate holder shall design and construct the facility using the minimum land area
17 necessary for safe construction and operation. The certificate holder shall locate access
18 roads and temporary construction laydown and staging areas to minimize disturbance of
19 farming practices and, wherever feasible, shall place turbines and transmission
20 interconnection lines along the margins of cultivated areas to reduce the potential for
21 conflict with farm operations.

22 40 The certificate holder shall install gates on private access roads in accordance with Gilliam
23 County Zoning Ordinance Section 7.020(T)(4)(d)(6) unless the County has granted a
24 variance to this requirement.

25 41 Before beginning construction of the facility, the certificate holder shall record in the real
26 property records of Gilliam County a Covenant Not to Sue with regard to generally
27 accepted farming practices on adjacent farmland consistent with GCZO Section
28 7.020(T)(4)(a)(5).

29 42 The certificate holder shall construct all facility components in compliance with the
30 following setback requirements:

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

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

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

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

(e) The certificate holder shall maintain a minimum distance of 250 feet measured from the center line of each turbine tower to the nearest edge of any railroad right-of-way or electrical substation.

(f) The certificate holder shall maintain a minimum distance of 250 feet measured from the center line of each meteorological tower to the nearest edge of any public road right-of-way or railroad right-of-way, the nearest boundary of the certificate holder's lease area or the nearest electrical substation.

(g) The certificate holder shall maintain a minimum distance of 50 feet measured from any facility O&M building to the nearest edge of any public road right-of-way or railroad right-of-way or the nearest boundary of the certificate holder's lease area.

(h) The certificate holder shall maintain a minimum distance of 50 feet measured from any substation to the nearest edge of any public road right-of-way or railroad right-of-way or the nearest boundary of the certificate holder's electrical substation easement or, if there is no easement, the nearest boundary of the certificate holder's lease area.

(i) Where (a) does not apply, the certificate holder shall maintain a minimum of 110-percent of maximum blade tip height, measured from the centerline of the turbine tower from any overhead utility line. [Amendment #1]

(j) Where (a) does not apply, the certificate holder shall maintain a minimum of 150-percent of maximum turbine height from blade tip height, measured from the centerline of the turbine tower from federal transmission lines, unless the affected parties agree otherwise. [Amendment #1]

43 During construction and operation of the facility, the certificate holder shall implement a weed control plan approved by the Gilliam County Weed Control Officer or other appropriate County officials to control the introduction and spread of noxious weeds.

44 During operation of the facility, the certificate holder shall restore areas that are temporarily disturbed during facility maintenance or repair activities using the same methods and monitoring procedures described in the *Revegetation Plan* referenced in Condition 92.

45 Within 90 days after beginning operation, the certificate holder shall provide to the Department and to the Gilliam County Planning Department the actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, connecting lines and transmission lines and a summary of as-built changes in the facility compared to the original plan.

46 The certificate holder shall deliver a copy of the annual report required under Condition 21 to the Gilliam County Planning Commission on an annual basis unless specifically discontinued by the County.

3. Cultural Resource Conditions

47 Before beginning construction, the certificate holder shall label all identified historic, cultural or archaeological resource sites on construction maps and drawings as "no entry"

1 areas. If construction activities will occur within 200 feet of an identified site, the
2 certificate holder shall flag a 30-meter no-entry buffer around the site. The certificate
3 holder may use existing private roads within the buffer areas but may not widen or
4 improve private roads within the buffer areas. The no-entry restriction does not apply to
5 public road rights-of-way within the buffer areas or to operational farmsteads.

6 48 In reference to the alignment of the Oregon Trail described in the *Final Order on the*
7 *Application*, the certificate holder shall comply with the following requirements:

8 (a) The certificate holder shall not locate facility components on visible remnants of the
9 Oregon Trail and shall avoid any construction disturbance to those remnants.

10 (b) The certificate holder shall not locate facility components on undeveloped land
11 where the trail alignment is marked by existing Oregon-California Trail Association
12 markers.

13 (c) Before beginning construction, the certificate holder shall provide to the State
14 Historic Preservation Office (SHPO) and the Department documentation of the presumed
15 Oregon Trail alignments within the site boundary.

16 (d) The certificate holder shall ensure that construction personnel proceed carefully in
17 the vicinity of the presumed alignments of the Oregon Trail. If any physical evidence of the
18 trail is discovered, the certificate holder shall avoid any disturbance to the intact segments
19 by redesign, re-engineering or restricting the area of construction activity and shall flag a
20 30-meter no-entry buffer around the intact Trail segments. The certificate holder shall
21 promptly notify the SHPO and the Department of the discovery. The certificate holder
22 shall consult with the SHPO and the Department to determine appropriate mitigation
23 measures.

24 49 Before beginning construction, the certificate holder shall provide to the Department a
25 map showing the final design locations of all components of the facility, the areas that
26 would be temporarily disturbed during construction and the areas that were surveyed in
27 2009 as described in the *Final Order on the Application*. The certificate holder shall hire
28 qualified personnel to conduct field investigations of all areas to be disturbed during
29 construction that lie outside the previously-surveyed areas. The certificate holder shall
30 provide a written report of the field investigations to the Department and to the Oregon
31 State Historic Preservation Office (SHPO) for review and approval. If any potentially
32 significant historic, cultural or archaeological resources are found during the field
33 investigation, the certificate holder shall instruct all construction personnel to avoid the
34 identified sites and shall implement appropriate measures to protect the sites, including
35 the measures described in Condition 47.

36 50 The certificate holder shall ensure that a qualified archaeologist, as defined in OAR
37 736-051-0070, instructs construction personnel in the identification of cultural materials
38 and avoidance of accidental damage to identified resource sites.

39 51 The certificate holder shall ensure that construction personnel cease all ground-disturbing
40 activities in the immediate area if any archaeological or cultural resources are found
41 during construction of the facility until a qualified archaeologist can evaluate the
42 significance of the find. The certificate holder shall notify the Department and the Oregon
43 State Historic Preservation Office (SHPO) of the find. If the SHPO determines that the

1 resource is significant, the certificate holder shall make recommendations to the Council
2 for mitigation, including avoidance, field documentation and data recovery, in
3 consultation with the Department, SHPO, interested Tribes and other appropriate parties.
4 The certificate holder shall not restart work in the affected area until the certificate holder
5 has demonstrated to the Department and the SHPO that it has complied with
6 archaeological resource protection regulations

4. Geotechnical Conditions

7 52 Before beginning construction, the certificate holder shall conduct a site-specific
8 geotechnical investigation and shall report its findings to the Oregon Department of
9 Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall
10 conduct the geotechnical investigation after consultation with DOGAMI and in general
11 accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic
12 Reports and Site-Specific Seismic Hazard Reports."

13 53 The certificate holder shall design and construct the facility in accordance with
14 requirements of the Oregon Structural Specialty Code (OSSC 2007) and the 2006
15 International Building Code.

16 54 The certificate holder shall design, engineer and construct the facility to avoid dangers to
17 human safety presented by non-seismic hazards. As used in this condition, "non-seismic
18 hazards" include settlement, landslides, flooding and erosion.

5. Hazardous Materials, Fire Protection & Public Safety Conditions

19 55 The certificate holder shall handle hazardous materials used on the site in a manner that
20 protects public health, safety and the environment and shall comply with all applicable
21 local, state and federal environmental laws and regulations. The certificate holder shall
22 not store diesel fuel or gasoline on the facility -site.

23 56 If a spill or release of hazardous material occurs during construction or operation of the
24 facility, the certificate holder shall notify the Department within 72 hours and shall clean
25 up the spill or release and dispose of any contaminated soil or other materials according to
26 applicable regulations. The certificate holder shall make sure that spill kits containing
27 items such as absorbent pads are located on equipment and at the O&M buildings. The
28 certificate holder shall instruct employees about proper handling, storage and cleanup of
29 hazardous materials

30 57 The certificate holder shall construct turbines and pad-mounted transformers on concrete
31 foundations and shall cover the ground within a 10-foot radius with non-flammable
32 material. The certificate holder shall maintain the non-flammable pad area covering during
33 operation of the facility.

34 58 The certificate holder shall install and maintain self-monitoring devices on each turbine,
35 linked to sensors at the operations and maintenance building, to alert operators to
36 potentially dangerous conditions, and the certificate holder shall immediately remedy any
37 dangerous conditions. The certificate holder shall maintain automatic equipment
38 protection features in each turbine that would shut down the turbine and reduce the
39 chance of a mechanical problem causing a fire.

- 1 59 During construction and operation of the facility, the certificate holder shall ensure that
2 the O&M buildings and all service vehicles are equipped with shovels and portable fire
3 extinguishers of a 4A50BC or equivalent rating.
- 4 60 During construction and operation of the facility, the certificate holder shall develop and
5 implement fire safety plans in consultation with the North Gilliam County Rural Fire
6 Protection District to minimize the risk of fire and to respond appropriately to any fires
7 that occur on the facility site. In developing the fire safety plans, the certificate holder
8 shall take into account the dry nature of the region and shall address risks on a seasonal
9 basis. The certificate holder shall meet annually with local fire protection agency
10 personnel to discuss emergency planning and shall invite local fire protection agency
11 personnel to observe any emergency drill or tower rescue training conducted at the
12 facility.
- 13 61 Upon the beginning of operation of the facility, the certificate holder shall provide a site
14 plan to the North Gilliam County Rural Fire Protection District. The certificate holder shall
15 indicate on the site plan the identification number assigned to each turbine and the actual
16 location of all facility structures. The certificate holder shall provide an updated site plan if
17 additional turbines or other structures are later added to the facility. During operation, the
18 certificate holder shall ensure that appropriate fire protection agency personnel have an
19 up-to-date list of the names and telephone numbers of facility personnel available to
20 respond on a 24-hour basis in case of an emergency on the facility site.
- 21 62 During construction, the certificate holder shall ensure that construction personnel are
22 trained in fire prevention and response, that construction vehicles and equipment are
23 operated on graveled areas to the extent possible and that open flames, such as cutting
24 torches, are kept away from dry grass areas.
- 25 63 During operation of the facility, the certificate holder shall ensure that all on-site
26 employees receive annual fire prevention and response training by qualified instructors or
27 members of the local fire districts. The certificate holder shall ensure that all employees
28 are instructed to keep vehicles on roads and off dry grassland, except when off-road
29 operation is required for emergency purposes.
- 30 64 Before beginning construction, the certificate holder shall submit a Notice of Proposed
31 Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon
32 Department of Aviation identifying the proposed final locations of turbine towers and
33 meteorological towers. The certificate holder shall promptly notify the Department of the
34 responses from the FAA and the Oregon Department of Aviation.
- 35 65 The certificate holder shall follow manufacturers' recommended handling instructions and
36 procedures to prevent damage to turbine or turbine tower components that could lead to
37 failure.
- 38 66 The certificate holder shall construct turbine towers with no exterior ladders or access to
39 the turbine blades and shall install locked tower access doors. The certificate holder shall
40 keep tower access doors locked at all times, except when authorized personnel are
41 present.

- 1 67 During operation of the facility, the certificate holder shall have a safety-monitoring
2 program and shall inspect all turbine and turbine tower components on a regular basis.
3 The certificate holder shall maintain or repair turbine and turbine tower components as
4 necessary to protect public safety.
- 5 68 For turbine types having pad-mounted step-up transformers, the certificate holder shall
6 install the transformers at the base of each tower in locked cabinets designed to protect
7 the public from electrical hazards and to avoid creation of artificial habitat for raptor prey.
- 8 69 To protect the public from electrical hazards, the certificate holder shall enclose the
9 facility substations with appropriate fencing and locked gates.
- 10 70 Before beginning construction of any new State Highway approaches or utility crossings,
11 the certificate holder shall obtain all required permits from the Oregon Department of
12 Transportation (ODOT) subject to the applicable conditions required by OAR Chapter 734,
13 Divisions 51 and 55. The certificate holder shall submit the necessary application in a form
14 satisfactory to ODOT and the Department for the location, construction and maintenance
15 of a new approach to State Highway 19 for access to the site south of Tree Lane. The
16 certificate holder shall submit the necessary application in a form satisfactory to ODOT
17 and the Department for the location, construction and maintenance of transmission lines
18 crossing Highway 19.
- 19 71 The certificate holder shall design and construct new access roads and private road
20 improvements to standards approved by the Gilliam County Road Department or, where
21 applicable, the Morrow County Public Works Department. Where modifications of County
22 roads are necessary, the certificate holder shall construct the modifications entirely within
23 the County road rights-of-way and in conformance with County road design standards
24 subject to the approval of the Gilliam County Road Department or, where applicable, the
25 Morrow County Public Works Department. Where modifications of State roads or
26 highways are necessary, the certificate holder shall construct the modifications entirely
27 within the public road rights-of-way and in conformance with Oregon Department of
28 Transportation (ODOT) standards subject to the approval of ODOT.
- 29 72 The certificate holder shall construct access roads with a finished width of up to 20 feet,
30 designed under the direction of a licensed engineer and compacted to meet equipment
31 load requirements.
- 32 73 During construction of the facility, the certificate holder shall implement measures to
33 reduce traffic impacts, including:
34 (a) Providing notice to adjacent landowners when heavy construction traffic is
35 anticipated.
36 (b) Providing appropriate traffic safety signage and warnings.
37 (c) Requiring flaggers to be at appropriate locations at appropriate times during
38 construction to direct traffic.
39 (d) Using traffic diversion equipment (such as advance signage and pilot cars) when
40 slow or oversize construction loads are anticipated.
41 (e) Maintaining at least one travel lane at all times to the extent reasonably possible so
42 that roads will not be closed to traffic because of construction vehicles.

- 1 (f) Encouraging carpooling for the construction workforce.
2 (g) Including traffic control procedures in contract specifications for construction of the
3 facility.
4 (h) Keeping Highway 19 free of gravel that tracks out onto the highway at facility access
5 points.

6 74 The certificate holder shall ensure that no equipment or machinery is parked or stored on
7 any County road whether inside or outside the site boundary. The certificate holder may
8 temporarily park equipment off the road but within County rights-of-way with the
9 approval of the Gilliam County Road Department or, where applicable, the Morrow
10 County Public Works Department.

11 75 The certificate holder shall cooperate with the Gilliam County Road Department and with
12 the Morrow County Public Works Department to ensure that any unusual damage or wear
13 to county roads that is caused by construction of the facility is repaired by the certificate
14 holder. Upon completion of construction, the certificate holder shall restore public roads
15 to pre-construction condition or better to the satisfaction of the applicable county
16 departments. If required by Morrow County or Gilliam County, the certificate holder shall
17 post bonds to ensure funds are available to repair and maintain roads affected by the
18 proposed facility.

19 76 During construction, the certificate holder shall require that all on-site construction
20 contractors develop and implement a site health and safety plan that informs workers and
21 others on-site about first aid techniques and what to do in case of an emergency and that
22 includes important telephone numbers and the locations of on-site fire extinguishers and
23 nearby hospitals. The certificate holder shall ensure that construction contractors have
24 personnel on-site who are trained and equipped for tower rescue and who are first aid
25 and CPR certified.

26 77 During operation of the facility, the certificate holder shall develop and implement a site
27 health and safety plan that informs employees and others on-site about first aid
28 techniques and what to do in case of an emergency and that includes important telephone
29 numbers and the locations of on-site fire extinguishers and nearby hospitals. The
30 certificate holder shall ensure that operations personnel are trained and equipped for
31 tower rescue.

32 78 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.

38 79 The certificate holder shall notify the Department of Energy and the Gilliam County
39 Planning Department within 72 hours of any accidents including mechanical failures on the
40 site associated with construction or operation of the facility that may result in public
41 health and safety concerns

6. Water, Soils, Streams & Wetlands Conditions

1 80 The certificate holder shall conduct all construction work in compliance with an Erosion
2 and Sediment Control Plan (ESCP) satisfactory to the Oregon Department of
3 Environmental Quality and as required under the National Pollutant Discharge Elimination
4 System (NPDES) Storm Water Discharge General Permit #1200-C. The certificate holder
5 shall include in the ESCP any procedures necessary to meet local erosion and sediment
6 control requirements or storm water management requirements.

7 81 During construction, the certificate holder shall limit truck traffic to improved road
8 surfaces to avoid soil compaction, to the extent practicable.

9 82 During construction, the certificate holder shall implement best management practices to
10 control any dust generated by construction activities, such as applying water to roads and
11 disturbed soil areas.

12 83 Before beginning construction, the certificate holder shall provide to the Department a
13 map showing the final design locations of all components of the facility and the areas that
14 would be disturbed during construction and showing the wetlands and stream channels
15 previously surveyed by CH2M HILL as described in the *Final Order on the Application*. For
16 areas to be disturbed during construction that lie outside of the previously-surveyed
17 areas, the certificate holder shall hire qualified personnel to conduct a pre-construction
18 investigation to determine whether any jurisdictional waters of the State exist in those
19 locations. The certificate holder shall provide a written report on the pre-construction
20 investigation to the Department and the Department of State Lands for approval before
21 beginning construction. The certificate holder shall ensure that construction and operation
22 of the facility will have no impact on any jurisdictional water identified in the pre-
23 construction investigation.

24 84 The certificate holder shall avoid impacts to waters of the state in the following manner:

25 (a) The certificate holder shall avoid any disturbance to delineated wetlands.

26 (b) The certificate holder shall construct stream crossings for roads and underground
27 collector lines substantially as described in the *Final Order on the Application*. In particular,
28 the certificate holder shall not remove material from waters of the State or add new fill
29 material to waters of the State such that the total volume of removal and fill exceeds 50
30 cubic yards for the project as a whole.

31 (c) The certificate holder shall construct support poles for aboveground lines outside of
32 delineated stream channels and shall avoid in-channel impacts.

33 85 During facility operation, the certificate holder shall routinely inspect and maintain all
34 roads, pads and trenched areas and, as necessary, maintain or repair erosion and
35 sediment control measures.

36 86 During facility operation, the certificate holder shall obtain water for on-site uses from on-
37 site wells located near the O&M buildings. The certificate holder shall construct on-site
38 wells subject to compliance with the provisions of ORS 537.765 relating to keeping a well
39 log. The certificate holder shall not use more than 5,000 gallons of water per day from the

on-site wells. The certificate holder may use other sources of water for on-site uses subject to prior approval by the Department.

87 During facility operation, if blade-washing becomes necessary, the certificate holder shall ensure that there is no runoff of wash water from the site or discharges to surface waters, storm sewers or dry wells. The certificate holder shall not use acids, bases or metal brighteners with the wash water. The certificate holder may use biodegradable, phosphate-free cleaners sparingly.

7. Transmission Line & EMF Conditions

88 The certificate holder shall install the 34.5-kV collector system underground to the extent practical. The certificate holder shall install underground lines at a minimum depth of three feet. Based on geotechnical conditions or other engineering considerations, the certificate holder may install segments of the collector system aboveground, but the total length of aboveground segments must not exceed 27 miles.

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

(a) Constructing all aboveground transmission lines at least 200 feet from any residence or other occupied structure, measured from the centerline of the transmission line.

(b) Providing to landowners a map of underground and overhead transmission lines on their property and advising landowners of possible health risks from electric and magnetic fields

(c) Designing and maintaining all transmission lines so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public.

(d) Designing and maintaining all transmission lines so that induced voltages during operation are as low as reasonably achievable.

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

8. Plants, Wildlife & Habitat Protection Conditions

91 The certificate holder shall conduct wildlife monitoring as described in the Wildlife Monitoring and Mitigation Plan that is incorporated in the *Final Order on the Application* as Attachment A and as amended from time to time.

92 The certificate holder shall restore areas disturbed by facility construction but not occupied by permanent facility structures according to the methods and monitoring procedures described in the Revegetation Plan that is incorporated in the *Final Order on the Application* as Attachment B and as amended from time to time.

93 The certificate holder shall acquire the legal right to create, enhance, maintain and protect a habitat mitigation area as long as the site certificate is in effect by means of an outright purchase, conservation easement or similar conveyance and shall provide a copy of the

documentation to the Department. Within the habitat mitigation area, the certificate holder shall improve the habitat quality as described in the Habitat Mitigation Plan that is incorporated in the *Final Order on Application* as Attachment C and as amended from time to time.

94 The certificate holder shall determine the boundaries of Category 1 Washington ground squirrel (WGS) habitat based on the locations where the squirrels were found to be active in the most recent WGS survey prior to the beginning of construction in habitat suitable for WGS foraging or burrow establishment ("suitable habitat"). The certificate holder shall hire a qualified professional biologist who has experience in detection of WGS to conduct surveys using a survey protocol approved by the Oregon Department of Fish and Wildlife (ODFW). The biologist shall survey all areas of suitable habitat where permanent facility components would be located or where construction disturbance could occur. Except as provided in (a), the biologist shall conduct the protocol surveys in the active squirrel season (March 1 to May 31) in 2010 and in the active squirrel seasons in subsequent years until the beginning of construction in suitable habitat. The certificate holder shall provide written reports of the surveys to the Department and to ODFW and shall identify the boundaries of Category 1 WGS habitat. The certificate holder shall not begin construction within suitable habitat until the identified boundaries of Category 1 WGS habitat have been approved by the Department. Category 1 WGS habitat includes the areas described in (b) and (c).

(a) The certificate holder may omit the WGS survey in any year if the certificate holder avoids all permanent and temporary disturbance within suitable habitat until a WGS survey has been completed in the following year and the boundaries of Category 1 habitat have been determined and approved based on that survey.

(b) Category 1 WGS habitat includes the area within the perimeter of multiple active WGS burrows plus a 785-foot buffer, excluding areas of habitat types not suitable for WGS foraging or burrow establishment. If the multiple-burrow area was active in a prior survey year, then Category 1 habitat includes the largest extent of the active burrow area ever recorded (in the current or any prior-year survey), plus a 785-foot buffer.

(c) Category 1 WGS habitat includes the area containing single active burrow detections plus a 785-foot buffer, excluding areas of habitat types not suitable for WGS foraging or burrow establishment. Category 1 habitat does not include single-burrow areas that were found active in a prior survey year but that are not active in the current survey year.

95 The certificate holder shall implement measures to mitigate impacts to sensitive wildlife habitat during construction including, but not limited to, the following:

(a) The certificate holder shall not construct any facility components within areas of Category 1 habitat and shall avoid temporary disturbance of Category 1 habitat.

(b) Before beginning construction, the certificate holder shall provide to the Department a map showing the final design locations of all components of the facility and the areas that would be disturbed during construction and identifying the survey areas for all plant and wildlife surveys conducted in 2010 or earlier as described in the *Final Order on the Application*. The certificate holder shall hire a qualified professional biologist to conduct a pre-construction plant and wildlife investigation of all areas that would be

1 disturbed during construction that lie outside of the previously surveyed areas. The
2 certificate holder shall provide a written report of the investigation to the Department and
3 to the Oregon Department of Fish and Wildlife (ODFW). Based on consultation with the
4 Department and ODFW, the certificate holder shall implement appropriate measures to
5 avoid impacts to any Category 1 habitat, to any State-listed threatened or endangered
6 plant or wildlife species, and to any State Candidate plant species.

7 (c) Before beginning construction, the certificate holder's qualified professional
8 biologist shall survey the Category 1 Washington ground squirrel habitat to ensure that
9 the sensitive use area is correctly marked with exclusion flagging and avoided during
10 construction. The certificate holder shall maintain the exclusion markings until
11 construction has been completed.

12 (d) Before beginning construction, certificate holder's qualified professional biologist
13 shall complete the avian use studies that began in September 2009 at six plots within or
14 near the facility site as described in the *Final Order on the Application*. The certificate
15 holder shall provide a written report on the avian use studies to the Department and to
16 ODFW.

17 (e) Before beginning construction, certificate holder's qualified professional biologist
18 shall complete raptor nest surveys within the raptor nest survey area as described in the
19 *Final Order on the Application*. The purposes of the survey are to identify any sensitive
20 raptor nests near construction areas and to provide baseline information on raptor nest
21 use for analysis as described in the Wildlife Monitoring and Mitigation Plan referenced in
22 Condition 91. The certificate holder shall provide a written report on the raptor nest
23 surveys to the Department and to ODFW.

24 (f) In the final design layout of the facility, the certificate holder shall locate facility
25 components, access roads and construction areas to avoid or minimize temporary and
26 permanent impacts to high quality native habitat and to retain habitat cover in the general
27 landscape where practicable.

28 96 During construction, the certificate holder shall avoid all construction activities within a
29 1,300-foot buffer around potentially-active nest sites of the following species during the
30 sensitive period, as provided in this 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

36 During the year in which construction occurs, the certificate holder shall use a protocol
37 approved by the Oregon Department of Fish and Wildlife (ODFW) to determine whether
38 there are any active nests of these species within a half-mile of any areas that would be
39 disturbed during construction. The certificate holder shall begin monitoring potential nest

1 sites by March 15 and shall continue monitoring until at least May 31 to determine
2 whether any potentially-active nest sites become active during the sensitive period.

3 If any nest site is determined to be unoccupied by the early release date (May 31), then
4 unrestricted construction activities may occur within 1,300 feet of the nest site after that
5 date. If a nest is occupied by any of these species after the beginning of the sensitive
6 period, the certificate holder will flag the boundaries of a 1,300-foot buffer area around
7 the nest site and shall instruct construction personnel to avoid disturbance of the buffer
8 area. During the sensitive period, the certificate holder shall not engage in high-impact
9 construction activities (activities that involve blasting, grading or other major ground
10 disturbance) within the buffer area. The certificate holder shall restrict construction traffic
11 within the buffer, except on public roads, to vehicles essential to the limited construction
12 activities allowed within the buffer.

13 If burrowing owl nests are occupied during the sensitive period, the certificate holder may
14 adjust the 1,300-foot buffer around these nests after consultation with ODFW and subject
15 to the approval of the Department.

16 The certificate holder shall hire a qualified independent professional biologist to observe
17 the active nest sites during the sensitive period for signs of disturbance and to notify the
18 Department of any non-compliance with this condition. If the biologist observes nest site
19 abandonment or other adverse impact to nesting activity, the certificate holder shall
20 implement appropriate mitigation, in consultation with ODFW and subject to the approval
21 of the Department, unless the adverse impact is clearly shown to have a cause other than
22 construction activity.

23 The certificate holder may begin or resume construction activities within the buffer area
24 before the ending day of the sensitive period with the approval of ODFW, after the young
25 are fledged. The certificate holder shall use a protocol approved by ODFW to determine
26 when the young are fledged (the young are independent of the core nest site).

27 97 The certificate holder shall protect the area within 1,300 feet of the BLM Horn Butte
28 Wildlife Area during the long-billed curlew nesting season (March 8 through June 15), as
29 described in this condition. Before beginning construction, the certificate holder shall
30 provide to the Department a map showing the areas of potential construction disturbance
31 in the vicinity of the BLM lands that are part of the Horn Butte Wildlife Area and showing a
32 1,300-foot buffer from those areas. During the nesting season, the certificate holder shall
33 not engage in high-impact construction activities (activities that involve blasting, grading
34 or other major ground disturbance) or allow high levels of construction traffic within the
35 buffer area. The certificate holder shall flag the boundaries of the 1,300-foot buffer area
36 and shall instruct construction personnel to avoid any unnecessary activity within the
37 buffer area. The certificate holder shall restrict construction traffic within the buffer,
38 except on public roads, to vehicles essential to the limited construction activities allowed
39 within the buffer. The certificate holder may engage in construction activities within the
40 buffer area at times other than the nesting season.

41 98 The certificate holder shall implement measures to avoid or mitigate impacts to sensitive
42 wildlife habitat during construction including, but not limited to, the following:

- (a) Preparing maps to show occlusion areas that are off-limits to construction personnel, such as nesting or denning areas for sensitive wildlife species.
- (b) Avoiding unnecessary road construction, temporary disturbance and vehicle use.
- (c) Limiting construction work to approved and surveyed areas shown on facility constraints maps.
- (d) Ensuring that all construction personnel are instructed to avoid driving cross-country or taking short-cuts within the site boundary or otherwise disturbing areas outside of the approved and surveyed construction areas.

99 The certificate holder shall reduce the risk of injuries to avian species by:

- (a) Installing turbine towers that are smooth steel structures that lack features that would allow avian perching.
- (b) Locating turbine towers to avoid areas of increased risk to avian species, such as cliff edges, narrow ridge saddles and gaps between hilltops.
- (c) Installing meteorological towers that are non-guyed structures to eliminate the risk of avian collision with guy-wires.
- (d) Designing and installing all aboveground transmission line support structures following the most current suggested practices for avian protection on power lines published by the Avian Power Line Interaction Committee.

100 The certificate holder shall hire a qualified environmental professional to provide environmental training during construction and operation. Environmental training includes information on the sensitive species present onsite, precautions to avoid injuring or destroying wildlife or sensitive wildlife habitat, exclusion areas, permit requirements and other environmental issues. The certificate holder shall instruct construction and operations personnel to report any injured or dead wildlife detected while on the site to the appropriate onsite environmental manager.

101 The certificate holder shall impose and enforce a construction and operation speed limit of 20 miles per hour throughout the facility site and, during the active squirrel season (March 1 to May 31), a speed limit of 10 miles per hour from one hour before sunset to one hour after sunrise on private roads near known Washington ground squirrel (WGS) colonies. The certificate holder shall ensure that all construction and operations personnel are instructed to watch out for and avoid WGS and other wildlife while driving through the facility site.

9. Visual Effects Conditions

102 To reduce the visual impact of the facility, the certificate holder shall:

- (a) Mount nacelles on smooth, steel structures, painted uniformly in a low-reflectivity, neutral white color.
- (b) Paint the substation structures in a low-reflectivity neutral color to blend with the surrounding landscape.
- (c) Not allow any advertising to be used on any part of the facility.
- (d) Use only those signs required for facility safety, required by law or otherwise required by this site certificate, except that the certificate holder may erect a sign near the

O&M buildings to identify the facility, may paint turbine numbers on each tower and may allow unobtrusive manufacturers' logos on turbine nacelles.

(e) Maintain any signs allowed under this condition in good repair.

103 The certificate holder shall design and construct the O&M buildings to be generally consistent with the character of similar buildings used by commercial farmers or ranchers in the area and shall paint the building in a low-reflectivity, neutral color to blend with the surrounding landscape.

104 The certificate holder shall not use exterior nighttime lighting except:

(a) The minimum turbine tower lighting required or recommended by the Federal Aviation Administration.

(b) Security lighting at the O&M buildings and at the substations, provided that such lighting is shielded or downward-directed to reduce glare.

(c) Minimum lighting necessary for repairs or emergencies.

(d) Minimum lighting necessary for construction directed to illuminate the work area and shielded or downward-directed to reduce glare.

105 The certificate holder shall maintain a minimum distance of 1,000 feet measured from the centerline of each turbine tower or meteorological tower to the centerline of the line-of-sight from the vantage point of the Fourmile Canyon interpretive site looking toward the visible Oregon Trail ruts (bearing S 89-42-34 W from latitude, longitude: 45.622047, -120.044112) as described in the *Final Order on the Application*.

10. Noise Control Conditions

106 To reduce construction noise impacts at nearby residences, the certificate holder shall:

(a) Confine the noisiest operation of heavy construction equipment to the daylight hours.

(b) Require contractors to install and maintain exhaust mufflers on all combustion engine-powered equipment; and

(c) Establish a complaint response system at the construction manager's office to address noise complaints.

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

(a) Information that identifies the final design locations of all turbines to be built at the facility.

(b) The maximum sound power level for the substation transformers and the maximum sound power level and octave band data for the turbines selected for the facility based on manufacturers' warranties or confirmed by other means acceptable to the Department.

(c) The results of noise analysis of the facility to be built according to the final design performed in a manner consistent with the requirements of OAR 340-035-0035(1)(b)(B)(iii)(IV) and (VI) demonstrating to the satisfaction of the Department that the total noise generated by the facility (including the noise from turbines and substation transformers) would meet the ambient degradation test and maximum allowable test at the appropriate measurement point for all potentially-affected noise sensitive properties.

(d) For each noise-sensitive property where the certificate holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-035-0035(1)(b)(B)(iii)(III),

1 a copy of the a legally effective easement or real covenant pursuant to which the owner of
2 the property authorizes the certificate holder's operation of the facility to increase
3 ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate
4 measurement point. The legally-effective easement or real covenant must: include a legal
5 description of the burdened property (the noise sensitive property); be recorded in the
6 real property records of the county; expressly benefit the certificate holder; expressly run
7 with the land and bind all future owners, lessees or holders of any interest in the
8 burdened property; and not be subject to revocation without the certificate holder's
9 written approval.

10 108 During operation of the facility, the certificate holder shall maintain a complaint response
11 system to address noise complaints. The certificate holder shall promptly notify the
12 Department of any complaints received regarding facility noise and of any actions taken by
13 the certificate holder to address those complaints. In response to a complaint from the
14 owner of a noise sensitive property regarding noise levels during operation of the facility,
15 the Council may require the certificate holder to monitor and record the statistical noise
16 levels to verify that the certificate holder is operating the facility in compliance with the
17 noise control regulations

11. Waste Management Conditions

18 109 The certificate holder shall provide portable toilets for on-site sewage handling during
19 construction and shall ensure that they are pumped and cleaned regularly by a licensed
20 contractor who is qualified to pump and clean portable toilet facilities.

21 110 During operation of the facility, the certificate holder shall discharge sanitary wastewater
22 generated at the O&M buildings to licensed on-site septic systems in compliance with
23 State permit requirements. The certificate holder shall design the septic systems for a
24 discharge capacity of less than 2,500 gallons per day.

25 111 The certificate holder shall implement a waste management plan during construction that
26 includes but is not limited to the following measures:

- 27 (a) Recycling steel and other metal scrap.
- 28 (b) Recycling wood waste.
- 29 (c) Recycling packaging wastes such as paper and cardboard.
- 30 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste
31 hauler.
- 32 (e) Segregating all hazardous wastes such as used oil, oily rags and oil-absorbent
33 materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for
34 disposal by a licensed firm specializing in the proper recycling or disposal of hazardous
35 wastes.
- 36 (f) Confining concrete delivery truck rinse-out within the foundation excavation,
37 discharging rinse water into foundation holes and burying other concrete waste as part of
38 backfilling the turbine foundation.

39 112 The certificate holder shall implement a waste management plan during facility operation
40 that includes but is not limited to the following measures:

- 41 (a) Training employees to minimize and recycle solid waste.

- 1 (b) Recycling paper products, metals, glass and plastics.
2 (c) Recycling used oil and hydraulic fluid.
3 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste
4 hauler.
5 (e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-
6 absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium
7 batteries for disposal by a licensed firm specializing in the proper recycling or disposal of
8 hazardous wastes.

9 **VI. CONDITIONS ADDED BY AMENDMENT # 1 OF MONTAGUE**

10 113 The transfer of the First Amended Site Certificate from the certificate holder to
11 Portland General Electric (PGE), the transferee, shall not be effective until PGE executes in
12 closing the form of site certificate naming PGE the certificate holder, which is attached as
13 Attachment B to the Final Order on Amendment #1. Upon closing, the First Amended Site
14 Certificate naming PGE as the certificate holder shall be in full force and effect and the First
15 Amended Site Certificate naming Montague Wind Power LLC as the certificate holder shall be
16 considered rescinded and void in its entirety.

17 114 Should the closing contemplated in Condition 113 not occur within 18 months of the
18 effective date of the First Amended Site Certificate to Montague Wind Power LLC, the
19 Council's transfer approval within the Final Order on Amendment #1 shall be void.

20 115 PGE must provide the Department a copy of the executed First Amended Site
21 Certificate and documentation of the asset purchase agreement within 7 days of closing.

VII. SUCCESSORS AND ASSIGNS

22 To transfer this site certificate or any portion thereof or to assign or dispose of it in any other
23 manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0100.

VIII. SEVERABILITY AND CONSTRUCTION

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

IX. GOVERNING LAW AND FORUM

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

X. EXECUTION

30 This site certificate may be Executed in counterparts and will become effective upon signature
31 by the Chair of the Energy Facility Siting Council and the authorized representative of the
32 certificate holder.

- 1 IN WITNESS WHEREOF, this site certificate has been Executed by the State of Oregon, acting by
2 and through its Energy Facility Siting Council, and by Montague Wind Power Facility LLC.

ENERGY FACILITY SITING COUNCIL

MONTAGUE WIND POWER FACILITY, LLC

By: _____ By: _____

W. Bryan Wolfe, Chair

Oregon Energy Facility Siting Council

Print: _____

Date: _____, 2013 ~~September 10, 2010~~ Date: _____

and

By: _____

Print: _____

Date: _____

Attachment B

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

**Site Certificate
for the
Montague Wind Power Facility**

June 21, 2013

The Oregon Energy Facility Siting Council

SITE CERTIFICATE

FOR THE MONTAGUE WIND POWER FACILITY

I. INTRODUCTION

1 The Oregon Energy Facility Siting Council (Council) issues this site certificate for the Montague
2 Wind Power Facility (the facility) in the manner authorized under ORS Chapter 469. This site
3 certificate is a binding agreement between the State of Oregon (State), acting through the
4 Council, and ~~Montague Wind Power Facility LLC~~ Portland General Electric (certificate holder)
5 authorizing the certificate holder to construct and operate the facility in Gilliam County,
6 Oregon. [Amendment #1] ~~[Amendment #1]~~

7 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of
8 this site certificate are set forth in the following documents, incorporated herein by this
9 reference: (a) the Final Order on the Application for the Montague Wind Power Facility issued
10 on September 10, 2010 (hereafter, Final Order on the Application), and (b) the Final Order on
11 Amendment #1 issued on _____, 2013. In interpreting this site certificate, any
12 ambiguity will be clarified by reference to the following, in order of priority: (1) this First
13 Amended Site Certificate, (2) the Final Order on Amendment #1, (3) the Final Order on the
14 Application, and (4) the record of the proceedings that led to the Final Order on the
15 Application and the Final Order on Amendment #1. [Amendment #1]

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

II. SITE CERTIFICATION

- 18 1. To the extent authorized by state law and subject to the conditions set forth herein, the
19 State authorizes the certificate holder to construct, operate and retire a wind energy facility,
20 together with certain related or supporting facilities, at the site in Gilliam County, Oregon, as
21 described in Section III of this site certificate. ORS 469.401(1).
- 22 2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in
23 effect on the date that termination is sought or until the site certificate is revoked under
24 ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that
25 revocation is ordered. ORS 469.401(1).
- 26 3. This site certificate does not address, and is not binding with respect to, matters that were
27 not addressed in the *Final Order on the Application and Amendment #1*. Such matters
28 include, but are not limited to: building code compliance, wage, hour and other labor
29 regulations, local government fees and charges and other design or operational issues that
30 do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and
31 rules for which the decision on compliance has been delegated by the federal government
32 to a state agency other than the Council. 469.503(3). [Amendment #1]

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

III. DESCRIPTION

1. The Facility

(a) The Energy Facility

27 The energy facility is an electric power generating plant with an average electric generating
28 capacity of up to 134.7 megawatts and a peak generating capacity of not more than 404
29 megawatts that produces power from wind energy. The facility consists of not more than 269
30 wind turbines. The maximum peak generating capacity of each turbine is not more than 3.0
31 megawatts. The energy facility is described further in the *Final Order on the Application and*
32 *Amendment #1*.

(b) Related or Supporting Facilities

33 The facility includes the following related or supporting facilities described below and in greater
34 detail in the *Final Order on the Application for the Montague Wind Power Facility and*
35 *Amendment #1*:

- 36 • Power collection system

- Control system
- Substations and 230-kV transmission lines
- Meteorological towers
- Operations and maintenance facilities
- Access roads
- Public roadway modifications
- Temporary construction areas

Power Collection System

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. To the extent practicable, the collection system is installed underground at a depth of at least three feet. Not more than 27 miles of the collector system is installed aboveground.

Control System

A fiber optic communications network links the wind turbines to a central computer at the O&M buildings. A Supervisory, Control and Data Acquisition (SCADA) system collects operating and performance data from each wind turbine and from the project as a whole and allows remote operation of the wind turbines.

Substations and 230-kV Transmission Lines

The facility includes two collector substations. An aboveground, single-circuit 230-kV transmission line connects the western substation to the central substation. An aboveground, single-circuit 230-kV transmission line connects the central substation to the 500-kV Slatt-Buckley transmission line owned by the Bonneville Power Administration (BPA) at the Slatt substation.

Meteorological Towers

The facility includes up to eight permanent meteorological towers.

Operations and Maintenance Facilities

The facility includes one or two operations and maintenance (O&M) facilities. An on-site well at each O&M facility supplies water for use during facility operation. Sewage is discharged to an on-site septic system.

Access Roads

The facility includes access roads to provide access to the turbine strings.

Public Roadway Modifications

The certificate holder may construct improvements to existing state and county public roads that are necessary for construction of the facility. These modifications would be confined to the existing road rights-of-way and would be undertaken with the approval of the Gilliam County Road Department or the Oregon Department of Transportation, depending on the location of the improvement.

Temporary Construction Areas

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

2. Location of the Proposed Facility

The facility is located south of Arlington, in Gilliam County, Oregon. The facility is located on private land subject to easements or lease agreements with landowners.

IV. CONDITIONS REQUIRED BY COUNCIL RULES

This section lists conditions required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) and OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities). These conditions should be read together with the specific facility conditions listed in Section V to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, and to protect the public health and safety. In these conditions the definitions in OAR 345-001-0010 apply.

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

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

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

1 OAR 345-027-0020(1): The Council shall not change the conditions of the site certificate except as provided for in OAR Chapter 345, Division 27.

2 OAR 345-027-0020(2): The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility.

3 OAR 345-027-0020(3): The certificate holder shall design, construct, operate and retire the facility:

(a) Substantially as described in the site certificate;

1 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,
2 and applicable state and local laws, rules and ordinances in effect at the time the site
3 certificate is issued; and

4 (c) In compliance with all applicable permit requirements of other state agencies.

5 4 OAR 345-027-0020(4): The certificate holder shall begin and complete construction of the
6 facility by the dates specified in the site certificate. (*See Conditions 24 and 25.*)

7 5 OAR 345-027-0020(5): Except as necessary for the initial survey or as otherwise allowed
8 for wind energy facilities, transmission lines or pipelines under this section, the certificate
9 holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing
10 on any part of the site until the certificate holder has construction rights on all parts of the
11 site. For the purpose of this rule, "construction rights" means the legal right to engage in
12 construction activities. For wind energy facilities, transmission lines or pipelines, if the
13 certificate holder does not have construction rights on all parts of the site, the certificate
14 holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a
15 clearing on a part of the site if the certificate holder has construction rights on that part of
16 the site and:

17 (a) The certificate holder would construct and operate part of the facility on that part
18 of the site even if a change in the planned route of the transmission line or pipeline occurs
19 during the certificate holder's negotiations to acquire construction rights on another part
20 of the site; or

21 (b) The certificate holder would construct and operate part of a wind energy facility on
22 that part of the site even if other parts of the facility were modified by amendment of the
23 site certificate or were not built.

24 6 OAR 345-027-0020(6): If the Council requires mitigation based on an affirmative finding
25 under any standards of Division 22 or Division 24 of this chapter, the certificate holder
26 shall consult with affected state agencies and local governments designated by the Council
27 and shall develop specific mitigation plans consistent with Council findings under the
28 relevant standards. The certificate holder must submit the mitigation plans to the
29 Department and receive Department approval before beginning construction or, as
30 appropriate, operation of the facility.

31 7 OAR 345-027-0020(7): The certificate holder shall prevent the development of any
32 conditions on the site that would preclude restoration of the site to a useful, non-
33 hazardous condition to the extent that prevention of such site conditions is within the
34 control of the certificate holder.

35 8 OAR 345-027-0020(8): Before beginning construction of the facility, the certificate holder
36 shall submit to the State of Oregon, through the Council, a bond or letter of credit, in a
37 form and amount satisfactory to the Council to restore the site to a useful, non-hazardous
38 condition. The certificate holder shall maintain a bond or letter of credit in effect at all
39 times until the facility has been retired. The Council may specify different amounts for the
40 bond or letter of credit during construction and during operation of the facility. (*See*
41 *Condition 32.*)

1 9 OAR 345-027-0020(9): The certificate holder shall retire the facility if the certificate holder
2 permanently ceases construction or operation of the facility. The certificate holder shall
3 retire the facility according to a final retirement plan approved by the Council, as
4 described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore
5 the site to a useful, non-hazardous condition at the time of retirement, notwithstanding
6 the Council's approval in the site certificate of an estimated amount required to restore
7 the site.

8 10 OAR 345-027-0020(10): The Council shall include as conditions in the site certificate all
9 representations in the site certificate application and supporting record the Council deems
10 to be binding commitments made by the applicant.

11 11 OAR 345-027-0020(11): Upon completion of construction, the certificate holder shall
12 restore vegetation to the extent practicable and shall landscape all areas disturbed by
13 construction in a manner compatible with the surroundings and proposed use. Upon
14 completion of construction, the certificate holder shall remove all temporary structures
15 not required for facility operation and dispose of all timber, brush, refuse and flammable
16 or combustible material resulting from clearing of land and construction of the facility.

17 12 OAR 345-027-0020(12): The certificate holder shall design, engineer and construct the
18 facility to avoid dangers to human safety presented by seismic hazards affecting the site
19 that are expected to result from all maximum probable seismic events. As used in this rule
20 "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading,
21 tsunami inundation, fault displacement and subsidence.

22 13 OAR 345-027-0020(13): The certificate holder shall notify the Department, the State
23 Building Codes Division and the Department of Geology and Mineral Industries promptly if
24 site investigations or trenching reveal that conditions in the foundation rocks differ
25 significantly from those described in the application for a site certificate. After the
26 Department receives the notice, the Council may require the certificate holder to consult
27 with the Department of Geology and Mineral Industries and the Building Codes Division
28 and to propose mitigation actions.

29 14 OAR 345-027-0020(14): The certificate holder shall notify the Department, the State
30 Building Codes Division and the Department of Geology and Mineral Industries promptly if
31 shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity
32 of the site.

33 15 OAR 345-027-0020(15): Before any transfer of ownership of the facility or ownership of
34 the site certificate holder, the certificate holder shall inform the Department of the
35 proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of
36 ownership that requires a transfer of the site certificate.

37 16 OAR 345-027-0020(16): If the Council finds that the certificate holder *has* permanently
38 ceased construction or operation of the facility without retiring the facility according to a
39 final retirement plan approved by the Council, *as* described in OAR 345-027-0110, the
40 Council shall notify the certificate holder and request that the certificate holder submit a
41 proposed final retirement plan to the Department within a reasonable time not to exceed

90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in OAR 345-027-0020(8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility *has* been retired according to the approved final retirement plan.

17 OAR 345-027-0023(4): If the facility includes any transmission line under Council jurisdiction:

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

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

18 OAR 345-027-0023(5): If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.

19 OAR 345-027-0028: The following general monitoring conditions apply:

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

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

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

(d) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a

1 written report to the Department describing the impact on the facility and any affected
2 site certificate conditions

3 20 OAR 345-026-0048: Following receipt of the site certificate or an amended site certificate,
4 the certificate holder shall implement a plan that verifies compliance with all site
5 certificate terms and conditions and applicable statutes and rules. As a part of the
6 compliance plan, to verify compliance with the requirement to begin construction by the
7 date specified in the site certificate, the certificate holder shall report promptly to the
8 Department of Energy when construction begins. Construction is defined in OAR
9 345-001-0010. In reporting the beginning of construction, the certificate holder shall
10 describe all work on the site performed before beginning construction, including work
11 performed before the Council issued the site certificate, and shall state the cost of that
12 work. For the purpose of this exhibit, "work on the site" means any work within a site or
13 corridor, other than surveying, exploration or other activities to define or characterize the
14 site or corridor. The certificate holder shall document the compliance plan and maintain it
15 for inspection by the Department or the Council.

16 21 OAR 345-026-0080: The certificate holder shall report according to the following
17 requirements:

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

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

27 (ii) By April 30 of each year after beginning construction, the certificate holder
28 shall submit an annual report to the Department addressing the subjects listed in OAR
29 345-026-0080. The Council Secretary and the certificate holder may, by mutual
30 agreement, change the reporting date.

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

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

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

42 (ii) Reliability and Efficiency of Power Production: For electric power plants, the
43 plant availability and capacity factors for the reporting year. The certificate holder shall

1 describe any equipment failures or plant breakdowns that had a significant impact on
2 those factors and shall describe any actions taken to prevent the recurrence of such
3 problems.

4 (iii) Fuel Use: For thermal power plants:

5 (A) The efficiency with which the power plant converts fuel into electric
6 energy. If the fuel chargeable to power heat rate was evaluated when the facility was
7 sited, the certificate holder shall calculate efficiency using the same formula and
8 assumptions, but using actual data; and

9 (B) The facility's annual hours of operation by fuel type and, every five years
10 after beginning operation, a summary of the annual hours of operation by fuel type as
11 described in OAR 345-024-0590(5).

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

15 (v) Monitoring Report: A list and description of all significant monitoring and
16 mitigation activities performed during the previous year in accordance with site certificate
17 terms and conditions, a summary of the results of those activities and a discussion of any
18 significant changes to any monitoring or mitigation program, including the reason for any
19 such changes.

20 (vi) Compliance Report: A description of all instances of noncompliance with a
21 site certificate condition. For ease of review, the certificate holder shall, in this section of
22 the report, use numbered subparagraphs corresponding to the applicable sections of the
23 site certificate.

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

27 (viii) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating
28 facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual
29 hours of operation of the carbon dioxide emitting equipment as described in OAR
30 345-024-0630(4).

31 22 OAR 345-026-0105: The certificate holder and the Department of Energy shall exchange
32 copies of all correspondence or summaries of correspondence related to compliance with
33 statutes, rules and local ordinances on which the Council determined compliance, except
34 for material withheld from public disclosure under state or federal law or under Council
35 rules. The certificate holder may submit abstracts of reports in place of full reports;
36 however, the certificate holder shall provide full copies of abstracted reports and any
37 summarized correspondence at the request of the Department.

38 23 OAR 345-026-0170: The certificate holder shall notify the Department of Energy within 72
39 hours of any occurrence involving the facility if:

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

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

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

V. SPECIFIC FACILITY CONDITIONS

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

1. Certificate Administration Conditions

24 The certificate holder shall begin construction of the facility by September 14, 2015~~within three years after the effective date of the site certificate~~. Under OAR 345-015-0085(9), a site certificate is effective upon execution by the Council Chair and the applicant. The Council may grant an extension of the deadline to begin construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment #1]

25 The certificate holder shall complete construction of the facility by September 14, 2018~~within six years after the effective date of the site certificate~~. Construction is complete when: (1) the facility is substantially complete as defined by the certificate holder's construction contract documents, (2) acceptance testing has been satisfactorily completed and (3) the energy facility is ready to begin continuous operation consistent with the site certificate. The certificate holder shall promptly notify the Department of the date of completion of construction. The Council may grant an extension of the deadline for completing construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment #1]

26 Before beginning construction of the facility, the certificate holder shall notify the Department whether the turbines identified as H1, H2, H3, H4, L8, L9, L10, L11 and L12 on Figure C-3a of the site certificate application will be built as part of the Montague Wind Power Facility or whether the turbines will be built as part of the Leaning Juniper II Wind Power Facility.

27 The certificate holder shall construct a facility substantially as described in the site certificate and may select turbines of any type, subject to the following restrictions and compliance with all other site certificate conditions. Before beginning construction, the certificate holder shall provide to the Department a description of the turbine types selected for the facility demonstrating compliance with this condition.

(a) The total number of turbines at the facility must not exceed 269 turbines.

(b) The combined peak generating capacity of the facility must not exceed 404 megawatts and the peak generating capacity of any individual turbine must not exceed 3.0 megawatts.

(c) The turbine hub height must not exceed 100 meters and the maximum blade tip height must not exceed 150 meters.

(d) The minimum blade tip clearance must be 4120 meters above ground.

[Amendment #1]

(e) The certificate holder shall request an amendment of the site certificate to increase the combined peak generating capacity of the facility beyond 404 megawatts, to increase the number of wind turbines to more than 269 wind turbines or to install wind turbines with a hub height greater than 100 meters, a blade tip height greater than 150 meters or a blade tip clearance less than 4120 meters above ground. [Amendment #1]

28 The certificate holder shall obtain all necessary federal, state and local permits or approvals required for construction, operation and retirement of the facility or ensure that its contractors obtain the necessary federal, state and local permits or approvals.

29 Before beginning construction, the certificate holder shall provide confirmation to the Department that the construction contractor or other third party has obtained all necessary permits or approvals and shall provide to the Department proof of agreements between the certificate holder and the third party regarding access to the resources or services secured by the permits or approvals.

30 Before beginning construction, the certificate holder shall notify the Department in advance of any work on the site that does not meet the definition of "construction" in ORS 469.300, excluding surveying, exploration or other activities to define or characterize the site, and shall provide to the Department a description of the work and evidence that its value is less than \$250,000.

31 Before beginning construction and after considering all micrositing factors, the certificate holder shall provide to the Department, to the Oregon Department of Fish and Wildlife (ODFW) and to the Planning Director of Gilliam County detailed maps of the facility site, showing the final locations where the certificate holder proposes to build facility components, and a table showing the acres of temporary and permanent habitat impact by habitat category and subtype, similar to Table 6 in the *Final Order on the Application*. The detailed maps of the facility site shall indicate the habitat categories of all areas that would be affected during construction (similar to Figures P-8a through P-8d in the site certificate application). In classifying the affected habitat into habitat categories, the certificate holder shall consult with the ODFW. The certificate holder shall not begin ground disturbance in an affected area until the habitat assessment has been approved by the Department. The Department may employ a qualified contractor to confirm the habitat assessment by on-site inspection.

32 Before beginning construction, the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either \$21.511 million (3rd Quarter 2010 dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b).

1 (a) The certificate holder may adjust the amount of the bond or letter of credit based
2 on the final design configuration of the facility and turbine types selected by applying the
3 unit costs and general costs illustrated in Table 2 in the *Final Order on the Application* and
4 calculating the financial assurance amount as described in that order, adjusted to the date
5 of issuance as described in (b) and subject to approval by the Department.

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

8 (i) Adjust the Subtotal component of the bond or letter of credit amount
9 (expressed in mid-2004 dollars) to present value, using the U.S. Gross Domestic Product
10 Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of
11 Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor
12 agency (the "Index") and using the average of the 2nd Quarter and 3rd Quarter 2004 index
13 values (to represent mid-2004 dollars) and the quarterly index value for the date of
14 issuance of the new bond or letter of credit. If at any time the Index is no longer
15 published, the Council shall select a comparable calculation to adjust mid-2004 dollars to
16 present value.

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

19 (iii) Add 10 percent of the adjusted Gross Cost (ii) for the adjusted administration
20 and project management costs and 10 percent of the adjusted Gross Cost (ii) for the
21 adjusted future developments contingency.

22 (iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) and round
23 the resulting total to the nearest \$1,000 to determine the adjusted financial assurance
24 amount.

25 (c) The certificate holder shall use a form of bond or letter of credit approved by the
26 Council.

27 (d) The certificate holder shall use an issuer of the bond or letter of credit approved by
28 the Council.

29 (e) The certificate holder shall describe the status of the bond or letter of credit in the
30 annual report submitted to the Council under Condition 21.

31 (f) The bond or letter of credit shall not be subject to revocation or reduction before
32 retirement of the facility site.

33 33 If the certificate holder elects to use a bond to meet the requirements of Condition 32, the
34 certificate holder shall ensure that the surety is obligated to comply with the requirements
35 of applicable statutes, Council rules and this site certificate when the surety exercises any
36 legal or contractual right it may have to assume construction, operation or retirement of
37 the energy facility. The certificate holder shall also ensure that the surety is obligated to
38 notify the Council that it is exercising such rights and to obtain any Council approvals
39 required by applicable statutes, Council rules and this site certificate before the surety
40 commences any activity to complete construction, operate or retire the energy facility.

41 34 Before beginning construction, the certificate holder shall notify the Department of the
42 identity and qualifications of the major design, engineering and construction contractor(s)
43 for the facility. The certificate holder shall select contractors that have substantial

experience in the design, engineering and construction of similar facilities. The certificate holder shall report to the Department any change of major contractors.

35 The certificate holder shall contractually require all construction contractors and subcontractors involved in the construction of the facility to comply with all applicable laws and regulations and with the terms and conditions of the site certificate. Such contractual provisions shall not operate to relieve the certificate holder of responsibility under the site certificate.

36 To ensure compliance with all site certificate conditions during construction, the certificate holder shall have a full-time, on-site assistant construction manager who is qualified in environmental compliance. The certificate holder shall notify the Department of the name, telephone number and e-mail address of this person.

37 Within 72 hours after discovery of conditions or circumstances that may violate the terms or conditions of the site certificate, the certificate holder shall report the conditions or circumstances to the Department.

2. Land Use Conditions

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

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

40 The certificate holder shall install gates on private access roads in accordance with Gilliam County Zoning Ordinance Section 7.020(T)(4)(d)(6) unless the County has granted a variance to this requirement.

41 Before beginning construction of the facility, the certificate holder shall record in the real property records of Gilliam County a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland consistent with GCZO Section 7.020(T)(4)(a)(5).

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

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

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

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

4 (d) Where (a) does not apply, the certificate holder shall maintain a minimum distance
5 of 110-percent of maximum blade tip height, measured from the centerline of the turbine
6 tower to the nearest boundary of the certificate holder's lease area.

7 (e) The certificate holder shall maintain a minimum distance of 250 feet measured
8 from the center line of each turbine tower to the nearest edge of any railroad right-of-way
9 or electrical substation.

10 (f) The certificate holder shall maintain a minimum distance of 250 feet measured from
11 the center line of each meteorological tower to the nearest edge of any public road right-
12 of-way or railroad right-of-way, the nearest boundary of the certificate holder's lease area
13 or the nearest electrical substation.

14 (g) The certificate holder shall maintain a minimum distance of 50 feet measured from
15 any facility O&M building to the nearest edge of any public road right-of-way or railroad
16 right-of-way or the nearest boundary of the certificate holder's lease area.

17 (h) The certificate holder shall maintain a minimum distance of 50 feet measured from
18 any substation to the nearest edge of any public road right-of-way or railroad right-of-way
19 or the nearest boundary of the certificate holder's electrical substation easement or, if
20 there is no easement, the nearest boundary of the certificate holder's lease area.

21 (i) Where (a) does not apply, the certificate holder shall maintain a minimum of 110-
22 percent of maximum blade tip height, measured from the centerline of the turbine
23 tower from any overhead utility line. [Amendment #1]

24 (j) Where (a) does not apply, the site certificate holder shall maintain a minimum of
25 150-percent of maximum turbine height from blade tip height, measured from the
26 centerline of the turbine tower from federal transmission lines, unless the affected
27 parties agree otherwise. [Amendment #1]

28 43 During construction and operation of the facility, the certificate holder shall implement a
29 weed control plan approved by the Gilliam County Weed Control Officer or other
30 appropriate County officials to control the introduction and spread of noxious weeds.

31 44 During operation of the facility, the certificate holder shall restore areas that are
32 temporarily disturbed during facility maintenance or repair activities using the same
33 methods and monitoring procedures described in the *Revegetation Plan* referenced in
34 Condition 92.

35 45 Within 90 days after beginning operation, the certificate holder shall provide to the
36 Department and to the Gilliam County Planning Department the actual latitude and
37 longitude location or Stateplane NAD 83(91) coordinates of each turbine tower,
38 connecting lines and transmission lines and a summary of as-built changes in the facility
39 compared to the original plan.

40 46 The certificate holder shall deliver a copy of the annual report required under Condition
41 21 to the Gilliam County Planning Commission on an annual basis unless specifically
42 discontinued by the County.

3. Cultural Resource Conditions

47 Before beginning construction, the certificate holder shall label all identified historic, cultural or archaeological resource sites on construction maps and drawings as "no entry" areas. If construction activities will occur within 200 feet of an identified site, the certificate holder shall flag a 30-meter no-entry buffer around the site. The certificate holder may use existing private roads within the buffer areas but may not widen or improve private roads within the buffer areas. The no-entry restriction does not apply to public road rights-of-way within the buffer areas or to operational farmsteads.

48 In reference to the alignment of the Oregon Trail described in the *Final Order on the Application*, the certificate holder shall comply with the following requirements:

(a) The certificate holder shall not locate facility components on visible remnants of the Oregon Trail and shall avoid any construction disturbance to those remnants.

(b) The certificate holder shall not locate facility components on undeveloped land where the trail alignment is marked by existing Oregon-California Trail Association markers.

(c) Before beginning construction, the certificate holder shall provide to the State Historic Preservation Office (SHPO) and the Department documentation of the presumed Oregon Trail alignments within the site boundary.

(d) The certificate holder shall ensure that construction personnel proceed carefully in the vicinity of the presumed alignments of the Oregon Trail. If any physical evidence of the trail is discovered, the certificate holder shall avoid any disturbance to the intact segments by redesign, re-engineering or restricting the area of construction activity and shall flag a 30-meter no-entry buffer around the intact Trail segments. The certificate holder shall promptly notify the SHPO and the Department of the discovery. The certificate holder shall consult with the SHPO and the Department to determine appropriate mitigation measures.

49 Before beginning construction, the certificate holder shall provide to the Department a map showing the final design locations of all components of the facility, the areas that would be temporarily disturbed during construction and the areas that were surveyed in 2009 as described in the *Final Order on the Application*. The certificate holder shall hire qualified personnel to conduct field investigations of all areas to be disturbed during construction that lie outside the previously-surveyed areas. The certificate holder shall provide a written report of the field investigations to the Department and to the Oregon State Historic Preservation Office (SHPO) for review and approval. If any potentially significant historic, cultural or archaeological resources are found during the field investigation, the certificate holder shall instruct all construction personnel to avoid the identified sites and shall implement appropriate measures to protect the sites, including the measures described in Condition 47.

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

1 51 The certificate holder shall ensure that construction personnel cease all ground-disturbing
2 activities in the immediate area if any archaeological or cultural resources are found
3 during construction of the facility until a qualified archaeologist can evaluate the
4 significance of the find. The certificate holder shall notify the Department and the Oregon
5 State Historic Preservation Office (SHPO) of the find. If the SHPO determines that the
6 resource is significant, the certificate holder shall make recommendations to the Council
7 for mitigation, including avoidance, field documentation and data recovery, in
8 consultation with the Department, SHPO, interested Tribes and other appropriate parties.
9 The certificate holder shall not restart work in the affected area until the certificate holder
10 has demonstrated to the Department and the SHPO that it has complied with
11 archaeological resource protection regulations

4. Geotechnical Conditions

12 52 Before beginning construction, the certificate holder shall conduct a site-specific
13 geotechnical investigation and shall report its findings to the Oregon Department of
14 Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall
15 conduct the geotechnical investigation after consultation with DOGAMI and in general
16 accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic
17 Reports and Site-Specific Seismic Hazard Reports."

18 53 The certificate holder shall design and construct the facility in accordance with
19 requirements of the Oregon Structural Specialty Code (OSSC 2007) and the 2006
20 International Building Code.

21 54 The certificate holder shall design, engineer and construct the facility to avoid dangers to
22 human safety presented by non-seismic hazards. As used in this condition, "non-seismic
23 hazards" include settlement, landslides, flooding and erosion.

5. Hazardous Materials, Fire Protection & Public Safety Conditions

24 55 The certificate holder shall handle hazardous materials used on the site in a manner that
25 protects public health, safety and the environment and shall comply with all applicable
26 local, state and federal environmental laws and regulations. The certificate holder shall
27 not store diesel fuel or gasoline on the facility site.

28 56 If a spill or release of hazardous material occurs during construction or operation of the
29 facility, the certificate holder shall notify the Department within 72 hours and shall clean
30 up the spill or release and dispose of any contaminated soil or other materials according to
31 applicable regulations. The certificate holder shall make sure that spill kits containing
32 items such as absorbent pads are located on equipment and at the O&M buildings. The
33 certificate holder shall instruct employees about proper handling, storage and cleanup of
34 hazardous materials

35 57 The certificate holder shall construct turbines and pad-mounted transformers on concrete
36 foundations and shall cover the ground within a 10-foot radius with non-flammable
37 material. The certificate holder shall maintain the non-flammable pad area covering during
38 operation of the facility.

- 1 58 The certificate holder shall install and maintain self-monitoring devices on each turbine,
2 linked to sensors at the operations and maintenance building, to alert operators to
3 potentially dangerous conditions, and the certificate holder shall immediately remedy any
4 dangerous conditions. The certificate holder shall maintain automatic equipment
5 protection features in each turbine that would shut down the turbine and reduce the
6 chance of a mechanical problem causing a fire.
- 7 59 During construction and operation of the facility, the certificate holder shall ensure that
8 the O&M buildings and all service vehicles are equipped with shovels and portable fire
9 extinguishers of a 4A50BC or equivalent rating.
- 10 60 During construction and operation of the facility, the certificate holder shall develop and
11 implement fire safety plans in consultation with the North Gilliam County Rural Fire
12 Protection District to minimize the risk of fire and to respond appropriately to any fires
13 that occur on the facility site. In developing the fire safety plans, the certificate holder
14 shall take into account the dry nature of the region and shall address risks on a seasonal
15 basis. The certificate holder shall meet annually with local fire protection agency
16 personnel to discuss emergency planning and shall invite local fire protection agency
17 personnel to observe any emergency drill or tower rescue training conducted at the
18 facility.
- 19 61 Upon the beginning of operation of the facility, the certificate holder shall provide a site
20 plan to the North Gilliam County Rural Fire Protection District. The certificate holder shall
21 indicate on the site plan the identification number assigned to each turbine and the actual
22 location of all facility structures. The certificate holder shall provide an updated site plan if
23 additional turbines or other structures are later added to the facility. During operation, the
24 certificate holder shall ensure that appropriate fire protection agency personnel have an
25 up-to-date list of the names and telephone numbers of facility personnel available to
26 respond on a 24-hour basis in case of an emergency on the facility site.
- 27 62 During construction, the certificate holder shall ensure that construction personnel are
28 trained in fire prevention and response, that construction vehicles and equipment are
29 operated on graveled areas to the extent possible and that open flames, such as cutting
30 torches, are kept away from dry grass areas.
- 31 63 During operation of the facility, the certificate holder shall ensure that all on-site
32 employees receive annual fire prevention and response training by qualified instructors or
33 members of the local fire districts. The certificate holder shall ensure that all employees
34 are instructed to keep vehicles on roads and off dry grassland, except when off-road
35 operation is required for emergency purposes.
- 36 64 Before beginning construction, the certificate holder shall submit a Notice of Proposed
37 Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon
38 Department of Aviation identifying the proposed final locations of turbine towers and
39 meteorological towers. The certificate holder shall promptly notify the Department of the
40 responses from the FAA and the Oregon Department of Aviation.

- 1 65 The certificate holder shall follow manufacturers' recommended handling instructions and
2 procedures to prevent damage to turbine or turbine tower components that could lead to
3 failure.
- 4 66 The certificate holder shall construct turbine towers with no exterior ladders or access to
5 the turbine blades and shall install locked tower access doors. The certificate holder shall
6 keep tower access doors locked at all times, except when authorized personnel are
7 present.
- 8 67 During operation of the facility, the certificate holder shall have a safety-monitoring
9 program and shall inspect all turbine and turbine tower components on a regular basis.
10 The certificate holder shall maintain or repair turbine and turbine tower components as
11 necessary to protect public safety.
- 12 68 For turbine types having pad-mounted step-up transformers, the certificate holder shall
13 install the transformers at the base of each tower in locked cabinets designed to protect
14 the public from electrical hazards and to avoid creation of artificial habitat for raptor prey.
- 15 69 To protect the public from electrical hazards, the certificate holder shall enclose the
16 facility substations with appropriate fencing and locked gates.
- 17 70 Before beginning construction of any new State Highway approaches or utility crossings,
18 the certificate holder shall obtain all required permits from the Oregon Department of
19 Transportation (ODOT) subject to the applicable conditions required by OAR Chapter 734,
20 Divisions 51 and 55. The certificate holder shall submit the necessary application in a form
21 satisfactory to ODOT and the Department for the location, construction and maintenance
22 of a new approach to State Highway 19 for access to the site south of Tree Lane. The
23 certificate holder shall submit the necessary application in a form satisfactory to ODOT
24 and the Department for the location, construction and maintenance of transmission lines
25 crossing Highway 19.
- 26 71 The certificate holder shall design and construct new access roads and private road
27 improvements to standards approved by the Gilliam County Road Department or, where
28 applicable, the Morrow County Public Works Department. Where modifications of County
29 roads are necessary, the certificate holder shall construct the modifications entirely within
30 the County road rights-of-way and in conformance with County road design standards
31 subject to the approval of the Gilliam County Road Department or, where applicable, the
32 Morrow County Public Works Department. Where modifications of State roads or
33 highways are necessary, the certificate holder shall construct the modifications entirely
34 within the public road rights-of-way and in conformance with Oregon Department of
35 Transportation (ODOT) standards subject to the approval of ODOT.
- 36 72 The certificate holder shall construct access roads with a finished width of up to 20 feet,
37 designed under the direction of a licensed engineer and compacted to meet equipment
38 load requirements.
- 39 73 During construction of the facility, the certificate holder shall implement measures to
40 reduce traffic impacts, including:

- 1 (a) Providing notice to adjacent landowners when heavy construction traffic is
2 anticipated.
- 3 (b) Providing appropriate traffic safety signage and warnings.
- 4 (c) Requiring flaggers to be at appropriate locations at appropriate times during
5 construction to direct traffic.
- 6 (d) Using traffic diversion equipment (such as advance signage and pilot cars) when
7 slow or oversize construction loads are anticipated.
- 8 (e) Maintaining at least one travel lane at all times to the extent reasonably possible so
9 that roads will not be closed to traffic because of construction vehicles.
- 10 (f) Encouraging carpooling for the construction workforce.
- 11 (g) Including traffic control procedures in contract specifications for construction of the
12 facility.
- 13 (h) Keeping Highway 19 free of gravel that tracks out onto the highway at facility access
14 points.

15 74 The certificate holder shall ensure that no equipment or machinery is parked or stored on
16 any County road whether inside or outside the site boundary. The certificate holder may
17 temporarily park equipment off the road but within County rights-of-way with the
18 approval of the Gilliam County Road Department or, where applicable, the Morrow
19 County Public Works Department.

20 75 The certificate holder shall cooperate with the Gilliam County Road Department and with
21 the Morrow County Public Works Department to ensure that any unusual damage or wear
22 to county roads that is caused by construction of the facility is repaired by the certificate
23 holder. Upon completion of construction, the certificate holder shall restore public roads
24 to pre-construction condition or better to the satisfaction of the applicable county
25 departments. If required by Morrow County or Gilliam County, the certificate holder shall
26 post bonds to ensure funds are available to repair and maintain roads affected by the
27 proposed facility.

28 76 During construction, the certificate holder shall require that all on-site construction
29 contractors develop and implement a site health and safety plan that informs workers and
30 others on-site about first aid techniques and what to do in case of an emergency and that
31 includes important telephone numbers and the locations of on-site fire extinguishers and
32 nearby hospitals. The certificate holder shall ensure that construction contractors have
33 personnel on-site who are trained and equipped for tower rescue and who are first aid
34 and CPR certified.

35 77 During operation of the facility, the certificate holder shall develop and implement a site
36 health and safety plan that informs employees and others on-site about first aid
37 techniques and what to do in case of an emergency and that includes important telephone
38 numbers and the locations of on-site fire extinguishers and nearby hospitals. The
39 certificate holder shall ensure that operations personnel are trained and equipped for
40 tower rescue.

41 78 During construction and operation of the facility, the certificate holder shall provide for
42 on-site security and shall establish good communications between on-site security

1 personnel and the Gilliam County Sheriff's Office. During operation, the certificate holder
2 shall ensure that appropriate law enforcement agency personnel have an up-to-date list of
3 the names and telephone numbers of facility personnel available to respond on a 24-hour
4 basis in case of an emergency on the facility site.

5 79 The certificate holder shall notify the Department of Energy and the Gilliam County
6 Planning Department within 72 hours of any accidents including mechanical failures on the
7 site associated with construction or operation of the facility that may result in public
8 health and safety concerns

6. Water, Soils, Streams & Wetlands Conditions

9 80 The certificate holder shall conduct all construction work in compliance with an Erosion
10 and Sediment Control Plan (ESCP) satisfactory to the Oregon Department of
11 Environmental Quality and as required under the National Pollutant Discharge Elimination
12 System (NPDES) Storm Water Discharge General Permit #1200-C. The certificate holder
13 shall include in the ESCP any procedures necessary to meet local erosion and sediment
14 control requirements or storm water management requirements.

15 81 During construction, the certificate holder shall limit truck traffic to improved road
16 surfaces to avoid soil compaction, to the extent practicable.

17 82 During construction, the certificate holder shall implement best management practices to
18 control any dust generated by construction activities, such as applying water to roads and
19 disturbed soil areas.

20 83 Before beginning construction, the certificate holder shall provide to the Department a
21 map showing the final design locations of all components of the facility and the areas that
22 would be disturbed during construction and showing the wetlands and stream channels
23 previously surveyed by CH2M HILL as described in the *Final Order on the Application*. For
24 areas to be disturbed during construction that lie outside of the previously-surveyed
25 areas, the certificate holder shall hire qualified personnel to conduct a pre-construction
26 investigation to determine whether any jurisdictional waters of the State exist in those
27 locations. The certificate holder shall provide a written report on the pre-construction
28 investigation to the Department and the Department of State Lands for approval before
29 beginning construction. The certificate holder shall ensure that construction and operation
30 of the facility will have no impact on any jurisdictional water identified in the pre-
31 construction investigation.

32 84 The certificate holder shall avoid impacts to waters of the state in the following manner:

33 (a) The certificate holder shall avoid any disturbance to delineated wetlands.

34 (b) The certificate holder shall construct stream crossings for roads and underground
35 collector lines substantially as described in the *Final Order on the Application*. In particular,
36 the certificate holder shall not remove material from waters of the State or add new fill
37 material to waters of the State such that the total volume of removal and fill exceeds 50
38 cubic yards for the project as a whole.

39 (c) The certificate holder shall construct support poles for aboveground lines outside of
40 delineated stream channels and shall avoid in-channel impacts.

- 1 85 During facility operation, the certificate holder shall routinely inspect and maintain all
2 roads, pads and trenched areas and, as necessary, maintain or repair erosion and
3 sediment control measures.
- 4 86 During facility operation, the certificate holder shall obtain water for on-site uses from on-
5 site wells located near the O&M buildings. The certificate holder shall construct on-site
6 wells subject to compliance with the provisions of ORS 537.765 relating to keeping a well
7 log. The certificate holder shall not use more than 5,000 gallons of water per day from the
8 on-site wells. The certificate holder may use other sources of water for on-site uses
9 subject to prior approval by the Department.
- 10 87 During facility operation, if blade-washing becomes necessary, the certificate holder shall
11 ensure that there is no runoff of wash water from the site or discharges to surface waters,
12 storm sewers or dry wells. The certificate holder shall not use acids, bases or metal
13 brighteners with the wash water. The certificate holder may use biodegradable,
14 phosphate-free cleaners sparingly.

7. Transmission Line & EMF Conditions

- 15 88 The certificate holder shall install the 34.5-kV collector system underground to the extent
16 practical. The certificate holder shall install underground lines at a minimum depth of
17 three feet. Based on geotechnical conditions or other engineering considerations, the
18 certificate holder may install segments of the collector system aboveground, but the total
19 length of aboveground segments must not exceed 27 miles.
- 20 89 The certificate holder shall take reasonable steps to reduce or manage human exposure to
21 electromagnetic fields, including but not limited to:
- 22 (a) Constructing all aboveground transmission lines at least 200 feet from any
23 residence or other occupied structure, measured from the centerline of the transmission
24 line.
- 25 (b) Providing to landowners a map of underground and overhead transmission lines on
26 their property and advising landowners of possible health risks from electric and magnetic
27 fields
- 28 (c) Designing and maintaining all transmission lines so that alternating current electric
29 fields do not exceed 9 kV per meter at one meter above the ground surface in areas
30 accessible to the public.
- 31 (d) Designing and maintaining all transmission lines so that induced voltages during
32 operation are as low as reasonably achievable.
- 33 90 In advance of, and during, preparation of detailed design drawings and specifications for
34 230-kV and 34.5-kV transmission lines, the certificate holder shall consult with the Utility
35 Safety and Reliability Section of the Oregon Public Utility Commission to ensure that the
36 designs and specifications are consistent with applicable codes and standards.

8. Plants, Wildlife & Habitat Protection Conditions

- 37 91 The certificate holder shall conduct wildlife monitoring as described in the Wildlife
38 Monitoring and Mitigation Plan that is incorporated in the *Final Order on the Application*
39 as Attachment A and as amended from time to time.

1 92 The certificate holder shall restore areas disturbed by facility construction but not
2 occupied by permanent facility structures according to the methods and monitoring
3 procedures described in the Revegetation Plan that is incorporated in the *Final Order on*
4 *the Application as Attachment B* and as amended from time to time.

5 93 The certificate holder shall acquire the legal right to create, enhance, maintain and protect
6 a habitat mitigation area as long as the site certificate is in effect by means of an outright
7 purchase, conservation easement or similar conveyance and shall provide a copy of the
8 documentation to the Department. Within the habitat mitigation area, the certificate
9 holder shall improve the habitat quality as described in the Habitat Mitigation Plan that is
10 incorporated in the *Final Order on the Application as Attachment C* and as amended from
11 time to time.

12 94 The certificate holder shall determine the boundaries of Category 1 Washington ground
13 squirrel (WGS) habitat based on the locations where the squirrels were found to be active
14 in the most recent WGS survey prior to the beginning of construction in habitat suitable
15 for WGS foraging or burrow establishment ("suitable habitat"). The certificate holder shall
16 hire a qualified professional biologist who has experience in detection of WGS to conduct
17 surveys using a survey protocol approved by the Oregon Department of Fish and Wildlife
18 (ODFW). The biologist shall survey all areas of suitable habitat where permanent facility
19 components would be located or where construction disturbance could occur. Except as
20 provided in (a), the biologist shall conduct the protocol surveys in the active squirrel
21 season (March 1 to May 31) in 2010 and in the active squirrel seasons in subsequent years
22 until the beginning of construction in suitable habitat. The certificate holder shall provide
23 written reports of the surveys to the Department and to ODFW and shall identify the
24 boundaries of Category 1 WGS habitat. The certificate holder shall not begin construction
25 within suitable habitat until the identified boundaries of Category 1 WGS habitat have
26 been approved by the Department. Category 1 WGS habitat includes the areas described
27 in (b) and (c).

28 (a) The certificate holder may omit the WGS survey in any year if the certificate holder
29 avoids all permanent and temporary disturbance within suitable habitat until a WGS
30 survey has been completed in the following year and the boundaries of Category 1 habitat
31 have been determined and approved based on that survey.

32 (b) Category 1 WGS habitat includes the area within the perimeter of multiple active
33 WGS burrows plus a 785-foot buffer, excluding areas of habitat types not suitable for WGS
34 foraging or burrow establishment. If the multiple-burrow area was active in a prior survey
35 year, then Category 1 habitat includes the largest extent of the active burrow area ever
36 recorded (in the current or any prior-year survey), plus a 785-foot buffer.

37 (c) Category 1 WGS habitat includes the area containing single active burrow
38 detections plus a 785-foot buffer, excluding areas of habitat types not suitable for WGS
39 foraging or burrow establishment. Category 1 habitat does not include single-burrow
40 areas that were found active in a prior survey year but that are not active in the current
41 survey year.

42 95 The certificate holder shall implement measures to mitigate impacts to sensitive wildlife
43 habitat during construction including, but not limited to, the following:

(a) The certificate holder shall not construct any facility components within areas of Category 1 habitat and shall avoid temporary disturbance of Category 1 habitat.

(b) Before beginning construction, the certificate holder shall provide to the Department a map showing the final design locations of all components of the facility and the areas that would be disturbed during construction and identifying the survey areas for all plant and wildlife surveys conducted in 2010 or earlier as described in the *Final Order on the Application*. The certificate holder shall hire a qualified professional biologist to conduct a pre-construction plant and wildlife investigation of all areas that would be disturbed during construction that lie outside of the previously surveyed areas. The certificate holder shall provide a written report of the investigation to the Department and to the Oregon Department of Fish and Wildlife (ODFW). Based on consultation with the Department and ODFW, the certificate holder shall implement appropriate measures to avoid impacts to any Category 1 habitat, to any State-listed threatened or endangered plant or wildlife species, and to any State Candidate plant species.

(c) Before beginning construction, the certificate holder's qualified professional biologist shall survey the Category 1 Washington ground squirrel habitat to ensure that the sensitive use area is correctly marked with exclusion flagging and avoided during construction. The certificate holder shall maintain the exclusion markings until construction has been completed.

(d) Before beginning construction, certificate holder's qualified professional biologist shall complete the avian use studies that began in September 2009 at six plots within or near the facility site as described in the *Final Order on the Application*. The certificate holder shall provide a written report on the avian use studies to the Department and to ODFW.

(e) Before beginning construction, certificate holder's qualified professional biologist shall complete raptor nest surveys within the raptor nest survey area as described in the *Final Order on the Application*. The purposes of the survey are to identify any sensitive raptor nests near construction areas and to provide baseline information on raptor nest use for analysis as described in the Wildlife Monitoring and Mitigation Plan referenced in Condition 91. The certificate holder shall provide a written report on the raptor nest surveys to the Department and to ODFW.

(f) In the final design layout of the facility, the certificate holder shall locate facility components, access roads and construction areas to avoid or minimize temporary and permanent impacts to high quality native habitat and to retain habitat cover in the general landscape where practicable.

96 During construction, the certificate holder shall avoid all construction activities within a 1,300-foot buffer around potentially-active nest sites of the following species during the sensitive period, as provided in this 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

During the year in which construction occurs, the certificate holder shall use a protocol approved by the Oregon Department of Fish and Wildlife (ODFW) to determine whether there are any active nests of these species within a half-mile of any areas that would be disturbed during construction. The certificate holder shall begin monitoring potential nest sites by March 15 and shall continue monitoring until at least May 31 to determine whether any potentially-active nest sites become active during the sensitive period.

If any nest site is determined to be unoccupied by the early release date (May 31), then unrestricted construction activities may occur within 1,300 feet of the nest site after that date. If a nest is occupied by any of these species after the beginning of the sensitive period, the certificate holder will flag the boundaries of a 1,300-foot buffer area around the nest site and shall instruct construction personnel to avoid disturbance of the buffer area. During the sensitive period, the certificate holder shall not engage in high-impact construction activities (activities that involve blasting, grading or other major ground disturbance) within the buffer area. The certificate holder shall restrict construction traffic within the buffer, except on public roads, to vehicles essential to the limited construction activities allowed within the buffer.

If burrowing owl nests are occupied during the sensitive period, the certificate holder may adjust the 1,300-foot buffer around these nests after consultation with ODFW and subject to the approval of the Department.

The certificate holder shall hire a qualified independent professional biologist to observe the active nest sites during the sensitive period for signs of disturbance and to notify the Department of any non-compliance with this condition. If the biologist observes nest site abandonment or other adverse impact to nesting activity, the certificate holder shall implement appropriate mitigation, in consultation with ODFW and subject to the approval of the Department, unless the adverse impact is clearly shown to have a cause other than construction activity.

The certificate holder may begin or resume construction activities within the buffer area before the ending day of the sensitive period with the approval of ODFW, after the young are fledged. The certificate holder shall use a protocol approved by ODFW to determine when the young are fledged (the young are independent of the core nest site).

97 The certificate holder shall protect the area within 1,300 feet of the BLM Horn Butte Wildlife Area during the long-billed curlew nesting season (March 8 through June 15), as described in this condition. Before beginning construction, the certificate holder shall provide to the Department a map showing the areas of potential construction disturbance in the vicinity of the BLM lands that are part of the Horn Butte Wildlife Area and showing a 1,300-foot buffer from those areas. During the nesting season, the certificate holder shall not engage in high-impact construction activities (activities that involve blasting, grading or other major ground disturbance) or allow high levels of construction traffic within the buffer area. The certificate holder shall flag the boundaries of the 1,300-foot buffer area

and shall instruct construction personnel to avoid any unnecessary activity within the buffer area. The certificate holder shall restrict construction traffic within the buffer, except on public roads, to vehicles essential to the limited construction activities allowed within the buffer. The certificate holder may engage in construction activities within the buffer area at times other than the nesting season.

98 The certificate holder shall implement measures to avoid or mitigate impacts to sensitive wildlife habitat during construction including, but not limited to, the following:

(a) Preparing maps to show occlusion areas that are off-limits to construction personnel, such as nesting or denning areas for sensitive wildlife species.

(b) Avoiding unnecessary road construction, temporary disturbance and vehicle use.

(c) Limiting construction work to approved and surveyed areas shown on facility constraints maps.

(d) Ensuring that all construction personnel are instructed to avoid driving cross-country or taking short-cuts within the site boundary or otherwise disturbing areas outside of the approved and surveyed construction areas.

99 The certificate holder shall reduce the risk of injuries to avian species by:

(a) Installing turbine towers that are smooth steel structures that lack features that would allow avian perching.

(b) Locating turbine towers to avoid areas of increased risk to avian species, such as cliff edges, narrow ridge saddles and gaps between hilltops.

(c) Installing meteorological towers that are non-guyed structures to eliminate the risk of avian collision with guy-wires.

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

100 The certificate holder shall hire a qualified environmental professional to provide environmental training during construction and operation. Environmental training includes information on the sensitive species present onsite, precautions to avoid injuring or destroying wildlife or sensitive wildlife habitat, exclusion areas, permit requirements and other environmental issues. The certificate holder shall instruct construction and operations personnel to report any injured or dead wildlife detected while on the site to the appropriate onsite environmental manager.

101 The certificate holder shall impose and enforce a construction and operation speed limit of 20 miles per hour throughout the facility site and, during the active squirrel season (March 1 to May 31), a speed limit of 10 miles per hour from one hour before sunset to one hour after sunrise on private roads near known Washington ground squirrel (WGS) colonies. The certificate holder shall ensure that all construction and operations personnel are instructed to watch out for and avoid WGS and other wildlife while driving through the facility site.

9. Visual Effects Conditions

102 To reduce the visual impact of the facility, the certificate holder shall:

(a) Mount nacelles on smooth, steel structures, painted uniformly in a low-reflectivity, neutral white color.

(b) Paint the substation structures in a low-reflectivity neutral color to blend with the surrounding landscape.

(c) Not allow any advertising to be used on any part of the facility.

(d) Use only those signs required for facility safety, required by law or otherwise required by this site certificate, except that the certificate holder may erect a sign near the O&M buildings to identify the facility, may paint turbine numbers on each tower and may allow unobtrusive manufacturers' logos on turbine nacelles.

(e) Maintain any signs allowed under this condition in good repair.

103 The certificate holder shall design and construct the O&M buildings to be generally consistent with the character of similar buildings used by commercial farmers or ranchers in the area and shall paint the building in a low-reflectivity, neutral color to blend with the surrounding landscape.

104 The certificate holder shall not use exterior nighttime lighting except:

(a) The minimum turbine tower lighting required or recommended by the Federal Aviation Administration.

(b) Security lighting at the O&M buildings and at the substations, provided that such lighting is shielded or downward-directed to reduce glare.

(c) Minimum lighting necessary for repairs or emergencies.

(d) Minimum lighting necessary for construction directed to illuminate the work area and shielded or downward-directed to reduce glare.

105 The certificate holder shall maintain a minimum distance of 1,000 feet measured from the centerline of each turbine tower or meteorological tower to the centerline of the line-of-sight from the vantage point of the Fourmile Canyon interpretive site looking toward the visible Oregon Trail ruts (bearing S 89-42-34 W from latitude, longitude: 45.622047, -120.044112) as described in the *Final Order on the Application*.

10. Noise Control Conditions

106 To reduce construction noise impacts at nearby residences, the certificate holder shall:

(a) Confine the noisiest operation of heavy construction equipment to the daylight hours.

(b) Require contractors to install and maintain exhaust mufflers on all combustion engine-powered equipment; and

(c) Establish a complaint response system at the construction manager's office to address noise complaints.

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

(a) Information that identifies the final design locations of all turbines to be built at the facility.

(b) The maximum sound power level for the substation transformers and the maximum sound power level and octave band data for the turbines selected for the facility based on manufacturers' warranties or confirmed by other means acceptable to the Department.

(c) The results of noise analysis of the facility to be built according to the final design performed in a manner consistent with the requirements of OAR 340-035-0035(1)(b)(B)(iii) (IV) and (VI) demonstrating to the satisfaction of the Department that the total noise generated by the facility (including the noise from turbines and substation transformers) would meet the ambient degradation test and maximum allowable test at the appropriate measurement point for all potentially-affected noise sensitive properties.

(d) For each noise-sensitive property where the certificate holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-035-0035(1)(b)(B)(iii)(III), a copy of the a legally effective easement or real covenant pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate measurement point. The legally-effective easement or real covenant must: include a legal description of the burdened property (the noise sensitive property); be recorded in the real property records of the county; expressly benefit the certificate holder; expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and not be subject to revocation without the certificate holder's written approval.

108 During operation of the facility, the certificate holder shall maintain a complaint response system to address noise complaints. The certificate holder shall promptly notify the Department of any complaints received regarding facility noise and of any actions taken by the certificate holder to address those complaints. In response to a complaint from the owner of a noise sensitive property regarding noise levels during operation of the facility, the Council may require the certificate holder to monitor and record the statistical noise levels to verify that the certificate holder is operating the facility in compliance with the noise control regulations

11. Waste Management Conditions

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

110 During operation of the facility, the certificate holder shall discharge sanitary wastewater generated at the O&M buildings to licensed on-site septic systems in compliance with State permit requirements. The certificate holder shall design the septic systems for a discharge capacity of less than 2,500 gallons per day.

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

- (a) Recycling steel and other metal scrap.
- (b) Recycling wood waste.
- (c) Recycling packaging wastes such as paper and cardboard.
- (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste hauler.
- (e) Segregating all hazardous wastes such as used oil, oily rags and oil-absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for

disposal by a licensed firm specializing in the proper recycling or disposal of hazardous wastes.

(f) Confining concrete delivery truck rinse-out within the foundation excavation, discharging rinse water into foundation holes and burying other concrete waste as part of backfilling the turbine foundation.

112 The certificate holder shall implement a waste management plan during facility operation that includes but is not limited to the following measures:

(a) Training employees to minimize and recycle solid waste.

(b) Recycling paper products, metals, glass and plastics.

(c) Recycling used oil and hydraulic fluid.

(d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste hauler.

(e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for disposal by a licensed firm specializing in the proper recycling or disposal of hazardous wastes.

VI. CONDITIONS ADDED BY AMENDMENT #1 OF MONTAGUE

113 PGE must provide the Department a copy of the executed First Amended Site Certificate and documentation of the asset purchase agreement within 7 days of closing

VII. SUCCESSORS AND ASSIGNS

To transfer this site certificate or any portion thereof or to assign or dispose of it in any other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0100.

VIII. SEVERABILITY AND CONSTRUCTION

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

IX. GOVERNING LAW AND FORUM

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

X. EXECUTION

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

1 **IN WITNESS WHEREOF**, this site certificate has been Executed by the State of Oregon, acting by
2 and through its Energy Facility Siting Council, and by ~~Montague Wind Power Facility LLC~~
3 Portland General Electric.

ENERGY FACILITY SITING COUNCIL
General Electric

~~Montague Wind Power Facility, LLC~~ Portland

By: _____ By: _____

W. Bryan Wolfe, Chair

Oregon Energy Facility Siting Council

Print: _____

Date: _____, 2013

Date: _____

and

By: _____

Print: _____

Date: _____

Attachment C

From: Marion Weatherford [mailto:mweathernw@yahoo.com]
Sent: Thursday, May 09, 2013 11:44 AM
To: Goodwin, Andrea
Subject: Support for Leaning Juniper II and Montague Wind Power Facility Transfers

I am a landowner in the proposed Leaning Juniper II and Montague Wind Power Project areas. I am a member of the budget committee for the Arlington School District. I am a property and income taxpayer in the County of Gilliam and State of Oregon.

The livability within this rural area has been immeasurably enhanced by Wind Power Development. It is the highest and best use of the land in a dry and harsh landscape. It has made Arlington School District one of the few self supporting school districts in Oregon. The global implications toward energy self reliance and a cleaner environment are all too obvious.

I urge the Energy Facility Siting Council (EFSC) to grant the Amendment and Transfer requests for the above Projects.

From: Steve Shaffer [mailto:steve.shaffer@co.gilliam.or.us]
Sent: Thursday, May 09, 2013 2:59 PM
To: Goodwin, Andrea
Subject: Montague

I urge the Energy Facility Siting Council (EFSC) to grant Iberdrola Renewables Amendment and Transfer requests of Leaning Juniper IIb and Montague Wind to PGE. Both Iberdrola Renewables and PGE are strong in helping Oregon to be recognized as a leader in clean-energy development.

It is energy projects like this, that can make Oregon's economic development, sound and sustainable.

As the Gilliam County Judge, I again I urge EFSC to grant the Amendment and Transfer requests!!

Respectfully.

Steve Shaffer

Steve Shaffer

Gilliam County Judge

PO Box 427

Condon, OR 97823

(541) 384-6351

steve.shaffer@co.gilliam.or.us



From: Jan Foglesong [mailto:xhcattle@msn.com]
Sent: Friday, May 10, 2013 5:10 AM
To: Goodwin, Andrea
Subject: amendment request

Dear Ms. Goodwin,

As a landowner in the proposed Leaning Juniper II and Montaque Wind Power Facilities, I urge the Energy Facility Siting Council (EFSC) to grant the Amendment and transfer requests. Please reference the recent OpEd article by Steve Schaffer about the benefits of wind energy in Gilliam County.

Thank you.

Sincerely, Jan Holzapfel Foglesong

From: jdrfarms [mailto:jdrfarms@hughes.net]
Sent: Sunday, April 28, 2013 10:56 AM
To: Goodwin, Andrea
Subject: Montague Amendment Request and Transfer Comment

Andrea Goodwin, Sitting Analyst
Oregon Department of Energy
395 E. Highland Avenue
Hermiston Or 97838

Dear Andrea,

We would like to offer our support for the Montague Amendment Request and Transfer. As landowners in the proposed Montague Wind Power Facility we urge the Energy Facility Siting Council (EFSC) to grant the Amendment and Transfer of the existing Site Certificate.

Current economic conditions require more time to develop energy projects. Montague Wind Power Facility has been thoroughly studied, reviewed and permitted by EFSC. The project requires an extension of time for completion.

The change in blade clearance could allow for a more efficient machine design, and result in less expensive power to the consumer.

The transfer of the Site Certificate to Portland General Electric (PGE) will allow an Oregon based company to provide Oregon rate payers with renewable energy produced in Oregon. This is a win win situation for PGE rate payers and all citizens in the State of Oregon. The Montague Wind Power Facility is sited in Gilliam County, an area with little to offer the rest of the state other than cattle, wheat, rock and wind power. Gilliam County will benefit from the tax revenue generated by the Montague project, improving schools, roads, and provide basic county services. The State of Oregon needs PGE to site wind projects in the state of Oregon, generating tax revenue providing funding for schools, state roads, and other state services. PGE will provide energy consumers of western Oregon the opportunity to purchase clean renewable energy produced in nearby Eastern Oregon. PGE will send lease payments to land owners, who pay Oregon state income tax, benefitting the entire state.

We live seven miles south of PGE's Carty coal fired power plant, we have had a first hand view of its benefits to the local community. PGE has provided many family wage jobs at the Carty plant for people in our community, as PGE transitions away from coal to cleaner energy we hope those jobs will remain and new opportunities for employment at the Montague Wind Power Facility will be available. As Morrow County landowners we will soon see a natural gas pipeline installed across our farm to provide fuel for a proposed PGE power plant at Carty. We will also soon have Idaho Power's Boardman to Hemingway transmission line cross our farm. So, we are very aware of the impacts of energy production and transmission, but the benefits to our local community and to the states economic health out way our concerns about changes

to our farm. PGE has been our neighbor for nearly forty years and we have confidence in their ability to construct and operate the Montague Wind Power Facility.

We encourage EFSC to approve the Montague amendment request and transfer. Oregon's economy needs projects like the Montague Wind Power Facility.

Sincerely,

Joe and Donna Rietmann

Joe and Donna Rietmann
70595 Dave Rietmann Rd
Ione, OR 97843
(541) 422-7435