



Nolin Hills Wind
c/o Capital Power
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June 15, 2022

Via U.S. First-Class Mail and Email

Chair Marci Grail, Council Chair
Councilmembers, EFSC

Todd Cornett, Siting Division Administrator

Oregon Department of Energy
550 Capitol Street NE, First Floor
Salem, OR 97310

Re: Public Hearing on DPO on ASC, Nolin Hills Wind Power Project

Dear Chair Grail and Councilmembers:

This letter has been prepared in response to the comments made by members of the Energy Facility Siting Council (EFSC, or Council) at the public hearing held on May 26, 2022 on the Draft Proposed Order (DPO) on the Application for Site Certificate for the Nolin Hills Wind Power Project (Project).

This letter and additional documents submitted respond to councilmembers' questions regarding Nolin Hills Wind LLC's (the Applicant) request for the Statewide Agricultural Goal 3 exception. We will appreciate the Council's consideration and review of the following supplemental documents, which align with evidence and information submitted in the Project's Application for Site Certificate, Exhibit K:

- Attachment 1. Sworn testimonial declarations of Bob Levy and Steven Corey, explaining why the Cunningham Sheep Company and Pendleton Ranches, Inc. landowners, in tandem with Nolin Hills, chose the proposed location for siting the solar PV generation facility;
- Attachment 2. Legal Memorandum from Stoel Rives LLP, responding to Council members' apparent request for an analysis of alternatives to the proposed solar PV generation site;
- Attachment 3. The Statewide Goal 3 exception analysis, extracted from ASC Exhibit K; and
- Attachment 4. Letter from Stoel Rives LLP dated May 20, 2022, expressing concern with ODOE's individual vs. holistic analysis of Nolin Hill's reasons for a Goal 3 exception and advising Council regarding unexpected consequences.

The Project is located in Umatilla County and includes both a wind and solar energy facility with a combined nominal generating capacity of approximately 600 megawatts (MW; preliminarily 340 MW from wind and 260 MW from solar). As discussed in more detail below, the Project's

solar generation facilities would be sited within a 1,896-acre solar siting area, which would permanently occupy more than 12 acres of high-value farmland—high-value farmland only due to the American Viticultural Area (AVA) designation per Oregon Revised Statute (ORS) 195.300(10)(f)—and 20 acres of arable land. Pursuant to Oregon Administrative Rule (OAR) 660-033-0130(38), siting of the Project’s solar generation facilities requires an exception to Statewide Planning Goal 3.

In their deliberations on the Statewide Planning Goal 3 exception at the May 26, 2022 hearing, Councilmembers Jenkins and Howe both requested more information to justify the Goal 3 exemption. The main points from their comments on the Goal 3 exception are summarized below with responses. **Attachment 1** contains sworn declarations of Bob Levy and Steve Corey that provide further information and explanation as to why the solar siting area was chosen and what makes it different from other cropland in the region. An excerpt of the deliberation transcript from the May 26, 2022 hearing is attached to the Stoel Rives LLP Legal Memorandum Re Statewide Goal 3 Exception Request (**Attachment 2**).

1. The solar siting area represents a significant percent of the landowner’s croplands.

Councilmember Jenkins noted the following in his comments: “In reference to the solar facility construction.... there’s 1,840 acres of arable land, which has been cultivated in the past and it represents 37.8, or about 38 percent of the landowner’s crop land in their ownership, which I think is fairly significant, and so, I think that’s important to recognize that this area proposed for the solar facility does represent a large portion of what is cropland on the applicant’s property.”

The Applicant and the solar siting area’s landowners¹ offer the following clarification in response to this comment.

Exhibit K provided the following language in Section 7.1:

The solar subject tracts, which include Tracts 3, 8, 11, and 14 (Figure K-6), total approximately 28,138 acres. Of this, the proposed 1,896-acre Goal 3 exception represents approximately 6.7 percent of the total area, and 9.1 percent of the total arable land within the subject tracts. Thus nearly 19,000 acres of arable land in the subject tracts would remain available for agricultural uses. While the Project would represent a larger percentage of the current dryland wheat area within the subject tracts (approximately 37.8 percent), it remains a much smaller percentage—approximately 2.5 percent—of the underlying landowner’s overall agricultural operations, which are not limited to the subject tracts and provides a more relevant scale for considering the impact (discussed further below).

To clarify, the original language quoted above is saying that the total arable land within the solar siting area (1,840 acres) represents 37.8 percent of the total amount of cropland located in Tracts 3, 8, 11, and 14. However, Tracts 3, 8, 11, and 14 represent only a small portion of the landowners’ total cropland landholdings in Umatilla County. The landowners’ total land holdings

¹ The solar siting area includes portions of tax lots with owners recorded by Umatilla County as Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches. Each of these entities are controlled by a single landowner family.

for cropland in Umatilla County is approximately 28,000 acres. **Therefore, the 1,840 acres of arable/cultivated land within the solar siting area represents approximately 6.6 percent of the landowners' total cropland area, not 37.8 percent.** This information is further explained in the Declaration of Steve Corey – see **Attachment 1**.

2. Why is this particular portion of property (the solar siting area) different from other cultivated property in region? Why should it be exempt from protection of agricultural lands where other property is subject to those protections?

Both Councilmembers Jenkins and Howe requested more information to explain how the Project's solar siting area is different from other cropland subject to Goal 3 protection and how these differences justify a Goal 3 exception. Furthermore, Councilmember Jenkins acknowledged that he accepted the evidence provided by the Applicant that the solar facility would not impact adjacent agricultural operations and that there are financial benefits to the landowner that could be used to enhance other on farm agricultural operations. However, more information was requested to justify the exception.

In response to the comments made by Councilmembers Jenkins and Howe, the Applicant and landowners offer the following information to explain what makes the solar siting area different from other cropland in the region that are under Goal 3 protection—mainly that the solar siting area has lower agricultural value than other croplands and the solar siting area's location is uniquely suited for siting a solar facility without impacting other, more productive agricultural lands. The sworn declarations of Bob Levy and Steve Corey specifically validate this information.

- I. The arable land within the solar siting area has lower agricultural value than other arable lands within the landowners' holdings and within the region. This is due to several factors:
 - a. **Lack of irrigation water. The solar siting area is not located within an irrigation district and has no place of use water rights.** Because irrigation is not available for the solar siting area, the land has historically been cultivated as winter wheat. However, due to low production averages, the solar siting area has not been cultivated for several years and this land has been taken out of agricultural production. As noted in the Levy and Corey declarations, this location is the least productive in all land holdings and no further plans exist to farm this site.
 - b. **Soil types.** As stated in Exhibit K (see **Attachment 3** for a consolidated excerpt of the sections of Exhibit K pertinent to the solar siting area and the Goal 3 exception), the solar siting area contains 1,840 acres of arable land that is composed of NRCS Class 3 soils. **There are no high-value soils in the solar siting area. Due to low production averages from the wheat crops in the solar siting area, the landowners decided to "idle" the land and enroll it in the conservation reserve program (CRP).** There are a number of requirements that qualify land for CRP and one of those is the weighted average erosion index. The soils in the solar siting area meet the erosion index of eight or higher and meet other CRP eligibility requirements.

- c. **Uneconomical for farming or grazing. The landowners decided to place the solar siting area in CRP as it is some of the least productive area in their cropland holdings and is uneconomical to farm.** See the declaration by Bob Levy in **Attachment 1** for more detailed explanation of the solar siting area’s cultivation history and the decision to place the area in CRP. It should be noted that an area of land immediately east of the solar siting area has soils with similar characteristics and was removed from farm production years ago because it was uneconomical to farm. Furthermore, the solar siting area is not suitable for grazing as the land is arid and dry most of the year, with grasses having little nutrient value for cattle grazing. Generally speaking, for 9 to 10 months of the year, no cattle or sheep are on this land, as the site simply does not provide sufficient nutrients for grazing due to its arid condition. Therefore, the landowners determined that the only monetary value they could receive for this area in the near term is to place the land in CRP. Per the declaration by Bob Levy (see Attachment 1), the current and future situation places the agricultural value of the solar siting area among the least valuable in the county.
 - II. The location of the solar siting area is located near existing and proposed transmission and interconnection infrastructure and existing agricultural access roads making it an ideal site to develop solar on marginal agricultural land without the need to build additional transmission lines or roads that could impact other agricultural lands. The following information explains this point in more detail:
 - a. **Proximity to Wind Farm Infrastructure: The solar siting area takes advantage of the transmission infrastructure that was already planned as part of the wind facility.** The solar siting area encompasses approximately 1,896 acres co-located with the northern Project substation, thus eliminating the need for additional collection and transmission lines that would be required if the solar siting area were located elsewhere in the Project Site Boundary. No Statewide Planning Goal exception is required for the wind facility; therefore, the wind facility’s substation and transmission line would theoretically be constructed regardless of the Goal 3 exception approval or denial. The proposed wind energy site was selected for wind power based on a favorable interpretation of the wind patterns by Capital Power and its predecessor. The Project’s generation profile matches well with the energy requirements of the Pacific Northwest. The site’s winds and generation peak in March and April, a time when hydro generation in the Pacific Northwest declines due to snowpack. In addition, the sites’ winds are strongest in the evening and lower during the day, thus the inclusion of solar at this particular location creates a more balanced generation profile, or “shape”, increasing reliability of the grid. As economics changed in the industry and the need for a more balanced energy generation scenario occurred, solar photovoltaic generation was added to the Project to increase the project viability. The solar part of the Project is important for the Project’s overall success. Therefore, **the solar siting area is different from other cropland in Umatilla County and the region because it will be located in close proximity to a**

proposed wind energy facility that has a robust wind resource with unusual daily and seasonal attributes for this region and provides interconnection opportunity for the solar facility without requiring additional transmission lines.

- b. Proximity to Existing Transmission:** The solar siting area is located within 1-mile of an existing BPA line that runs through the landowners' property and very close to a proposed substation to be built by BPA. Therefore, **even if the wind facility were not constructed, the solar siting area location is still unique in its ability to reach the grid with an economical connection.**
- c. Proximity to Other Infrastructure:** Of all the acres under management by the landowners the solar siting area best integrates wind and solar electrical generation with no impact on the landowners' agricultural productivity. The location is close to the transmission infrastructure, is close to existing agricultural roads, is relatively flat, has an excellent solar resource, requires no additional generation-tie line, and is close to the landowners' ranch headquarters where there is existing telecom infrastructure that will be required for the project.

3. *The Applicant did not provide an alternatives analysis.*

Councilmember Jenkins noted the following in his comments: "The applicant alleges this site would have the least impact on other on property cultivated agricultural uses, but there are no identified alternatives in the analysis area nor is one required by the EFSC rules."

The Applicant agrees that an alternatives analysis is not required by the EFSC rules. A legal memorandum is included in **Attachment 2** that provides further legal explanation as to why an alternatives analysis is not required as part of the Goal 3 exception criteria and justification. However, the Applicant offers the following to address Councilmember Jenkins comment.

Exhibit K, Section 7.1 provides a discussion regarding the lack of alternative sites within the Site Boundary that have less impact to agriculture. While the Applicant has significant concerns about the councilmember requests for an evaluation of alternative locations (see the Stoel Rives Legal Memorandum in **Attachment 2**), the Applicant summarizes the rationale and decision making supporting this location below:

- The solar siting area is one of three contiguous areas comprised of at least 1,896 acres in size with less than 10 percent slope within the Site Boundary. However, the other two contiguous areas of sufficient size and slope in the Site Boundary are also located on arable soils and include existing dryland agricultural operations, and therefore do not provide alternative sites that avoid arable land or provide less impact to agriculture.
- The Applicant selected the area best suited to allow continuation of existing commercial farm use through the most efficient use of land and least number of acres impacted within the Site Boundary. This is achieved by co-locating the solar siting area with the northern Project substation, thus eliminating the need for additional collection and transmission lines for a site farther away, resulting in fewer impacts to farmland and potential division of farm fields.

- In contrast, the alternative solar siting area at the southern end of the Site Boundary would require more transmission infrastructure, while not providing any beneficial avoidance of Goal 3 lands. The southern site would also result in potentially greater high-quality habitat (Category 1) impacts within the Site Boundary in order to connect to the northern Project substation.
- The other alternative location, located in the western portion of the Site Boundary, includes lands that are classified as high-value farmland based on ORS 195.300(10)(C) due to place of use water rights. Therefore, the Applicant identified the western location as having a greater extent of high-value farmland than the proposed solar siting area, where no existing or canceled water rights are present. As a result, the western location does not provide a comparative Goal 3 benefit to the proposed solar siting area.

See Section 3.1 in **Attachment 3** for a copy of the Goal 3 exception analysis extracted from Exhibit K of the Final ASC. As evidenced in the attached declarations from the landowners (see **Attachment 1**), the solar siting area was carefully selected by the Applicant and the Project landowners to minimize impacts to existing and future agricultural operations while taking advantage of a relatively flat area located adjacent to the transmission infrastructure already sited for the wind facility. The location of the solar siting area is best suited to allow continuation of existing commercial farm use on other locations through the most efficient use of land and least number of acres impacted within the Site Boundary.

While there may be other potential solar sites in Umatilla County/Central or Eastern Oregon near transmission lines or substations with available capacity that meet the siting criteria for a 260-MW solar facility, all such locations are likely in Exclusive Farm Use or forest use lands (or otherwise not large enough, site constrained, etc.). Other potential solar sites of this size in Exclusive Farm Use or forest use land in Umatilla County would likely need a Goal 3 exception as well, as solar facilities over 320 acres require a goal exception regardless of the arable or non-arable soil characteristics (see OAR 660-033-0130(38)(j)).

Conclusion

We hope the additional information set forth above and attached provides the information Councilmembers Jenkins and Howe were seeking to justify why the solar siting area is different from other cropland in the Site Boundary, the county, and the region. We encourage the councilmembers to review the Goal 3 exception analysis from the Applicant's Exhibit K (see **Attachment 3**) and consider each of the reasons² justifying why a Goal 3 exception is appropriate. As stated in the May 20, 2022 letter from Stoel Rives LLP (**Attachment 4**), we are concerned that ODOE's evaluation of the reasons justifying the Goal 3 exception in the DPO were conducted individually and not holistically, while past practices for review of Goal 3 exceptions has accounted for the accumulation of factors and not separately weighing them individually. We believe that only considering reasons individually and not holistically sets a precedent that will limit the Council's ability to evaluate and approve Goal 3 exceptions in the future. Although we have concerns with this new precedent for analysis, we are in agreement with ODOE's conclusion in the DPO that the Nolin Hills Project provides compelling and

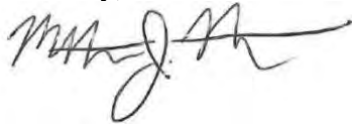
² The term "reasons" refers to its use under ORS 469.504(2)(c)(A) and OAR 345-022-0030(4)(c)(A).

substantial evidence to justify the Goal 3 exception based on the legal criteria affirmed by the Oregon Supreme Court. We believe the Project has provided sufficient justification for an exception to Statewide Planning Goal 3 under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c) and that an exception is warranted to allow a locationally dependent facility that will fulfill important state and county goals, by providing renewable energy while minimizing impacts on local farming practices.

If you have any questions, or require further information, please contact me at:

Matthew Martin
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Boston, MA 02110
(617) 274-7700
Email: mmartin@capitalpower.com

Sincerely,



Matthew Martin
Director, Business Development

Enclosures:

- Attachment 1. Sworn testimonial declarations of Bob Levy and Steven Corey, explaining why the Cunningham Sheep Company and Pendleton Ranches, Inc. landowners, in tandem with Nolin Hills, chose the proposed location for siting the solar PV generation facility;
- Attachment 2. Legal Memorandum from Stoel Rives LLP, responding to Councilmembers' apparent request for an analysis of alternatives to the proposed solar PV generation site;
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cc: Bob Levy, Cunningham Sheep Company
Steve Corey, Cunningham Sheep Company
Timothy L. McMahan, Stoel Rives LLP
Linnea Fossum, Tetra Tech

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Attachment 1.

Sworn testimonial declarations of Bob Levy and Steven Corey, explaining why the Cunningham Sheep Company and Pendleton Ranches, Inc. landowners, in tandem with Nolin Hills, chose the proposed location for siting the solar PV generation facility

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

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In the Matter of the Application for Site Certificate)
for the Nolin Hills Wind Power Project)
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DECLARATION OF BOB LEVY

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct to the best of my knowledge:

1. My name is Bob Levy. Like my cousin Steve Corey, I am a third-generation owner of the Cunningham Sheep Company, along with five other closely held family companies, separately arranged for economic and historical reasons. Echoing Steve Corey’s testimony, my grandparents founded and purchased the agricultural lands and operations after moving from Oklahoma in 1919. Our land holdings consist of inherited lands as well as acquired lands through several generations of family. Our family is in a process of transitioning our legacy farm to fourth and fifth generations of owners. All Cunningham and Pendleton operations are entirely owned by our families, comprised of 40-plus individual family members. I have primary farming credentials including knowledge of the land proposed by Nolin Hills for solar PV generation, although all family members are involved in the agricultural operations. Like Steve Corey, I have worked in management positions, I have served as the President on the Cunningham Board and as a co-managing partner of other Ranch companies.

2. I have a master’s degree Agricultural Economics, Oregon State University. From 1974 to present my experience includes, ownership of companies and management experience including the following. I am experienced in irrigated and dryland farming with extensive history in converting land to irrigated farms with numerous partners including JR Simplot. I have owned and managed with partners irrigated farms developed in Umatilla, Morrow, and Harney Counties of Oregon. I have grown the following crops: potatoes, onions, corn, wheat, carrots, lima beans,

peas, grass seed, canola, and 22,000 acres of dryland wheat in a summer fallow rotation. I have extensive experience in all aspects of cattle and sheep production. I am experienced in marketing and product distribution in value added chains, including fresh and processed onions across the US and imports from Chile. We distributed fresh potatoes from Oregon to the Los Angeles area markets in my early career. I have served on statewide boards and commissions and special committees, including the following:

- Gov. Ted Kulongoski transition team
- Gov. Ted Kulongoski, select group to study and make recommendations on efficiency in government
- Gov. John Kitzhaber, 10-year budget planning committee
- Board of agriculture eight years including two years as chairman
- Port of Portland nine years including holding the office of secretary-treasurer

I have been active in the following local and statewide organizations:

- Oregon water coalition – founding member
- Farmers ending hunger – original board member
- Northeast Oregon Association – board member
- Potato growers of Oregon – board member and president
- Westland irrigation District – board member and president
- Oregon business Council – board member

I have received numerous awards, including Simplot Potato Grower of the Year and Oregon State University Agriculture Hall of Fame.

3. The proposed solar PV generation site has been taken out of agricultural production and is currently CRP land. The site is immediately adjacent to land that we removed from farm crop production many years ago because it was uneconomical to farm. The proposed solar PV site is very similar in soil type, topography, and rainfall: with continuing adverse changes in farm economics, it too is uneconomical to farm; it is our least productive area for farming, yet it is close to the wind generation facility and related infrastructure. There is no water resource or irrigation. CRP restrictions and limitations on capability for grazing leave CRP as the most profitable choice for this property. Practically speaking, the property can generate the highest monetary value as grazing or in, CRP. With costs of agricultural production increasing, farming this site is extremely difficult, inefficient, and costly. Use for range land similarly has minimal value to us. Range land is arid and dry most of the year, with grasses having limited value for cattle grazing. Generally speaking, for 9 to 10 months of the year, no cattle or sheep would be

on this land if it were returned to grass. In summary, it is not economical or feasible for us to farm this land at current time. Expenses of farming, including deployment of labor, chemicals, fertilizer, and lack of water leave this land with questionable value to us. We can achieve the best of all worlds by “idling” the solar site, being carbon efficient with a good solar project, and preserve the land under the solar panels for any subsequent agricultural use reflecting then-existing climate and farm economics as may be practical.

4. Our family understands that the law mandates utilities to reduce greenhouse gas emissions associated with electricity and based on the 2021 “Clean Energy Targets” legislation, 100% of the electricity Oregonians use should generally come from renewable resources by 2040. To meet these goals some agricultural land will need to be rededicated to solar PV generation use, and out of agricultural production. We consider the use of our land, and specifically less productive farmland, to be an important part of meeting these requirements and others to respond to climate change. To clarify information already submitted and discussed, the Nolin Hills project is an example of low-yield agricultural land that should be repurposed and should receive a Goal 3 Exception based on the information in the record. We ask the Siting Council to understand our own view of the Goal 3 request, based on the following information.

Economics. The soil maps provided by the NRCS and reproduced in the application do not consider the full economic situation of the subject solar site property. Cunningham uses all the up-to-date varieties of wheat that conserve moisture and take less fertility than older varieties. In addition, over time we have adapted to the minimum or no till farming practices, we disturb the soil as little as possible, and we follow all the latest guidelines. Even with the most recent up-to-date practices the 1896-acre site proposed for solar use cannot produce wheat at a breakeven or above absent unreliable government programs, and generally has a negative financial return. Low returns and soil erosion are some primary considerations for placing land into the CRP program. These are decisions are made by landowners in consultation with the Farm Service Agency (FSA). We have eight years remaining that the solar site will be under CRP contract. If it is not eligible for reenrollment at that time, it will probably be returned to grassland. ***This current and future situation places the value of this specific property among the least valuable in the county.***

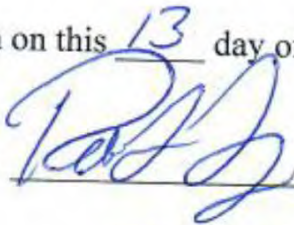
Location to the grid. The proposed solar site is within 1 mile of a BPA transmission line that runs through the property and through the site of a proposed substation to be built by Bonneville. The location makes this property unusual in its ability to reach the grid with an economical connection. Of all the acres under management by Cunningham this parcel can best integrate wind and solar electrical generation.

Small part of total ownership. The proposed solar site covers approximately 1896 acres. As noted in Steve Corey's testimony, this is less than 7% of the total dryland wheat producing land managed and owned by Cunningham and related entities. The solar acres represent less than 1.2% of the total agricultural acres owned and managed by Cunningham and related companies. This is a unique situation where a solar site can be located within vast holdings on a legacy agricultural site.

History of data collection and site selection. For more than a decade Cunningham and its contractors have gathered wind data on our entire landholdings. In addition to the data on our owned property, other wind companies gather data for many acres bordering and near the company property. The proposed wind energy site was selected for wind power based on a favorable interpretation of the wind patterns by Capital Power and its predecessor. Nolin Hills' generation profile matches well with the energy requirements of the Pacific Northwest. The site's winds and generation peak in March and April, a time when hydro generation in the PNW declines due to snowpack. In addition, the sites' winds are strongest in the evening and lower during the day, thus the inclusion of solar *at this particular location* creates a more balanced generation profile, or "shape", increasing reliability of the grid. As economics changed in the industry and the need for a more balanced energy generation scenario occurred, solar PV generation was added to the project to increase the project viability. The solar part of this project is important for the project's overall success.

5. I am available to the Siting Council to answer any questions regarding my testimony for the Council to fully understand how the Nolin Hills solar PV facility will enhance our operations, expand agricultural activities, and enable us to expand farm employment in Umatilla County.

SIGNED at Umatilla County, Oregon on this 13 day of June, 2022.

Signed:  _____

Printed name: Robert L. Levy _____

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

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In the Matter of the Application for Site Certificate
for the Nolin Hills Wind Power Project

DECLARATION OF STEVEN COREY

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct, to the best of my knowledge:

1. My name is Steve Corey. I am a third-generation owner of the Cunningham Sheep Company and seven other closely held family companies, separately arranged for economic and historical reasons. My grandparents founded and purchased the agricultural lands and operations after moving from Oklahoma in 1919. Our land holdings consist of inherited lands as well as acquired lands through several generations of family, with agricultural land holdings in Umatilla, Morrow and Union Counties. Our family is in a process of transitioning our legacy farm to fourth and fifth generations of owners. All Cunningham and Pendleton operations are entirely owned by our families, comprised of 40-plus individual family members. Bob Levy has primary farming credentials including knowledge of the land proposed by Nolin Hills for solar PV generation, although all family members are actively involved in the agricultural operations. Along with Bob Levy and others working in management positions, I have served as the Secretary and Treasurer on the Cunningham Board and as a co-managing partner of each of the Pendleton and Cunningham Ranch companies.

2. I grew up in Pendleton, attending local public schools, graduating from Pendleton High School. I have a degree in American Studies from Yale. After college, I joined the Oregon National Guard, serving for 6 years. I attended Stanford Law School, and in addition to my responsibilities on our farming operations, I actively practice agricultural, natural resource and water law in Pendleton. I am a member of the American College of Trial Lawyers. I have a

lifetime commitment to community service, having been a Board member of the Pendleton Round Up Association. I have been named “First Citizen” by the Pendleton Chamber of Commerce. I served as Board member and President of the Oregon Community Foundation, and I served on the Oregon Transportation Commission (ODOT). I also served on the Port of Portland Board. Oregon’s Governor awarded me with the “Economic Development Partner” award. In addition to my law practice and community service, I have always worked on my family’s farm and ranch operations, on a day-to-day basis, and I am intimately familiar with our properties and their operations.

3. As a five-generation Oregon agricultural operation, a key strength in our business is the diversity of our operation and our family’s involvement. We do not only depend on farmlands. We have sheep, cattle, forestry and hunting operations. Thus, when we face poor market conditions in any one sector (*e.g.* farming), we are able to maintain the strength of our overall operations. Overall, we are a consolidated farm and ranch, coordinated into one combined operation. All business enterprises are linked together by intercompany agreements, in a single overall market approach. For example, we are currently focused on maintaining our agricultural lands, mindful that even international conditions such as the Ukraine crisis can have impacts on our efforts. Similarly, we maintain significant lands in CRP, preserved and maintained at a management level to balance our overall farming, with a sustainability approach to meet land conservation and stewardship goals. Our outlook is to be innovative, to conserve and preserve our lands, crops and livestock. With one minor exception, we have not sold any of our lands for more than 70 years, and we continue to be committed to our ongoing agricultural operations. We and our predecessors have consistently delivered wool to Pendleton Mills for more than 100 years. We recommend that the Councilmembers read the attached Capital Press article by Sierra McClain (April 28, 2022) for a further historical description of our family’s operations.

4. To understand our support for the solar project, it is essential to understand our overall view of the Nolin Hills project and how it fits within our farming operations and business practices and objectives. As further explained in Bob Levy’s testimony, we consider this project and the Nolin Hills site to be “unique” because in addition to our own wind energy data collection, Capital Power and its predecessor developer conducted several years of wind profile analysis for this overall project site. Due to the nature of the predominant winds, we believe that

this site will produce power when other nearby sites will not, and at a time of year greatly needed in the western United States. Coupled with solar and battery storage, this power site can provide a spectrum of power both needed and unusual, essentially around the clock. The solar PV facility is essential to this goal, and its location in the heart of the wind project and near our headquarters and other infrastructure makes it work from a locational, layout and design standpoint.

5. As part of our sustainability goals, we are also exploring opportunities to replace our equipment with non-carbon emitting equipment, including electrifying our farm equipment. We understand that on a long-term basis, we will not be using petroleum fueled vehicles, and we consider the renewable energy facility as part of our investment in low-carbon farming practices. We believe that both the Nolin Hills facility and electrification of our equipment will continue to allow us to invest in diversity and maintenance of our family operations, singling out our enterprises as a model in sustainability.

6. The location of the solar facility is a significant factor in siting the overall facility. The location is close to the transmission infrastructure. It is flat, with an excellent prospect toward the sun. No separate generator intertie line is needed. The wind energy facility was proposed first – the solar facility was proposed later to take advantage of relatively flat land, the availability of infrastructure from the wind energy facility, and a lack of impact on existing agricultural operations (including ranching) near the substation. It is close to our farm headquarters and communications center (our hardline phone ties are located at the communications center). The solar site is in a remote location, avoiding any unlikely glare impacts for passing motorists. Also due to its remoteness, the site location reduces the risks of vandalism.

7. While a Goal 3 Exception is not needed for the wind facility, the solar facility takes advantage of already proposed transmission infrastructure associated with the wind energy facility. In essence, the solar facility is an efficient use of land and avoids additional transmission lines. While there may be other potential solar sites in Umatilla County/Central Oregon near transmission lines with available capacity, I believe all such locations are likely in

EFU or Forest Lands (or otherwise not large enough, site constrained, etc.) Any site in Umatilla County would also need a Goal 3 Exception, but if chosen over the proposed site, such other location would be remote from the substation and would not serve the Project’s purpose of a fully integrated, round-the-clock, hybrid renewable energy facility.

8. In response to Councilmember Jenkins comment about the 1,840 acres of arable land in the solar siting area representing 37.8 percent of the landowner’s total croplands, we would like to provide some clarification. Exhibit K provided the following language in Section 7.1:

“The solar subject tracts, which include Tracts 3, 8, 11, and 14 (Figure K-6), total approximately 28,138 acres. Of this, the proposed 1,896-acre Goal 3 exception represents approximately 6.7 percent of the total area, and 9.1 percent of the total arable land within the subject tracts. Thus nearly 19,000 acres of arable land in the subject tracts would remain available for agricultural uses. While the Project would represent a larger percentage of the current dryland wheat area within the subject tracts (approximately 37.8 percent), it remains a much smaller percentage—approximately 2.5 percent—of the underlying landowner’s overall agricultural operations, which are not limited to the subject tracts and provides a more relevant scale for considering the impact (discussed further below).”

To clarify, the original language quoted above is saying that the total arable land within the solar siting area (1,840 acres) represents 37.8 percent of the total amount of cropland located in Tracts 3, 8, 11, and 14. However, Tracts 3, 8, 11, and 14 represent only a small portion of the Cunningham Sheep Company/Pendleton Ranches/Mud Springs Ranches (the landowners¹) total cropland landholdings in Umatilla County. Cunningham’s total land holdings for cropland in Umatilla County is approximately 28,000 acres. *Therefore, the 1,840 acres of arable/cultivated land within the solar siting area represents approximately 6.6% of the Ranches’ total cropland area, not 37.8 percent.*

Footnote:

1. The solar siting area includes portions of tax lots with owners recorded by Umatilla County as Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches. Each of these entities are controlled by a single landowner family.

9. We ask the Siting Council to reread our January 27 letter for further information related to this site, and our ability to make better use and investment in our operations as a result of lease payments. At present we are employing 35 individuals. We anticipate that with lease revenues, we can make additional investments in capital improvements and deferred maintenance. The revenues would allow us to hire between 10 – 15 additional employees, deployed in other

agricultural ventures, expanding our hunting program, and expanding our forestry team to harvest timber.

10. I am available to the Siting Council to answer any questions regarding my testimony for the Council to fully understand how the Nolin Hills solar PV facility will enhance our operations, expand agricultural activities, and enable us to expand farm employment in Umatilla County.

SIGNED at Umatilla County, Oregon on this 13th day of June, 2022.

Signed: Steven H. Corey

Printed name: Steven H. Corey

https://www.capitalpress.com/ag_sectors/livestock/family-farm-eastern-oregon-operation-gives-the-term-a-whole-new-meaning/article_7aab0732-c4fc-11ec-9749-37ac55c73c15.html

'FAMILY FARM': Eastern Oregon operation gives the term a whole new meaning

By SIERRA DAWN McCLAIN Capital Press, Apr 28, 2022

PENDLETON, Ore. — Inside the Pendleton Woolen Mills retail store, shoppers oohed and aahed while fingering vibrantly colored clothing and blankets.

“I love people’s reactions. That’s the most gratifying thing about this work,” said John Bishop, president of Pendleton Woolen Mills.

In the adjoining mill — run by generations of the same family since 1909 — skilled artisans worked alongside roaring machinery. Wool was carded, aligned into roving, wound onto spools, stretched and twisted into yarn on spinning frames and sent to looms to be woven into cloth.

Some of this wool came from the Cunningham Sheep Co., one of Oregon’s largest and oldest family-run farms, with thousands of sheep plus cattle, timber, wheat and hunting grounds.

Those familiar with the farm say its success was built on more than just land and capital; it was also forged through five generations of family members, each contributing to the farm in different ways through a highly orchestrated business structure.

“We are truly a family ranch with almost a 100-year history in the same family, and to me, that’s the most important thing, not so much how much sagebrush we’ve got,” said Steve Corey, 75, himself a member of the family farm.

Corey, former longtime chair and secretary-treasurer of the farm’s board, acted as spokesman for the family business and gave the Capital Press a tour of the farm.

Five generations

According to family records, the sheep business was founded by Charles Cunningham in 1873.

In 1933, Mac Hoke and his business partner, Don Cameron, acquired it. Cameron later sold to Hoke’s family, in whose hands the farm has remained ever since.

Hoke and his wife, Carrie, the first generation, had two daughters: Joan and Helen, the second generation.

Joan married a Corey and Helen married a Levy.

Joan Hoke Corey had three children and Helen Hoke Levy had six — the third generation.

In the fourth generation, there are six Coreys and 17 Levys.

The fifth generation is comprised of around 30 children.

About 75% of the family has stayed in Eastern Oregon, and most family members — including the children — spend some time on the farm.

Everyone has a voice

Industry leaders and community members say the farm's success is partly attributable to its structure, which strategically incorporates generations of family members.

Direct lineal descendants inherit interest in the company, but non-owners also play a role.

The family has two entities that contribute to the business: a family board and a family council.

The board includes eight family members and one independent director. Board members vote on business decisions. The current board has seven fourth-generation family members and one third-generation member. Older generations are transitioning out.

The family council is separate, existing to give everyone a voice. Spouses of lineal descendants are allowed to participate. Although council members don't get to vote on business decisions, the council keeps the family connected and is a "breeding ground for ideas," Steve Corey said.

On some family farms, only those who actually work the ground get an ownership stake and a say in how the farm is run, but that's not the case with Cunningham Sheep Co. This family encourages each generation to pursue their own career interests, on or off the farm, but to be part of the farm either way.

Some family members have chosen farm life, including Dick Levy, who manages cattle, and Bob Levy, who oversees sheep. Others have chosen off-farm occupations,

including Steve Corey, who worked in the farm's wheat fields when he was young, studied history at Yale University and law at Stanford University, then returned to practice as an attorney in Eastern Oregon.

Both categories — those in full-time farming and those with off-farm careers — participate in the family board and council, contributing their skills and knowledge to the farm.

Sharing responsibility between family members has kept the business in its best shape, said Corey, though it has demanded “a great deal of coordination and communication.”

‘Wool was king’

Early in the farm's history, Cunningham Sheep Co. had about 25,000 sheep, and the farm has a long history of selling its wool exclusively to Pendleton Woolen Mills.

“Back then, wool was king,” said Glen Krebs, the farm's lead sheep herder.

As markets changed through the decades, Cunningham Sheep Co. whittled down its flock — the farm now keeps about 4,000 ewes, plus rams and lambs — and expanded into other commodities.

In the 1960s, the family added cattle and now raises 1,200 cow-calf pairs annually. The family also diversified by adding wheat, timberland and a hunting operation called Hunt Oregon LLC.

Since the 1950s, the farm has increased its acreage by 60% to 80%.

Steve Corey showed the Capital Press a map of the family's holdings: private land, timberlands and federal grazing lands extending across Umatilla County and parts of Morrow and Union counties. Corey estimated the farm is larger than 75,000 acres.

Although the farm now produces a diverse mix of livestock, wheat and timber, many locals still know Cunningham Sheep Co. best for what gave the farm its name: sheep.

Fine-wooled Rambouillets

Wool remains a major part of the farm 149 years after Cunningham started the business.

The Coreys and Levys raise Rambouillet sheep, a large, white-faced breed that produces fine wool soft enough to be worn next to the skin.

“Shearing is a busy time,” said Glen Krebs, lead sheep herder.

Krebs ascended a ramp to the upper story of a barn lined with shearing stations.

Annually, he said, the farm pays a shearing contractor to bring in several shearers.

Shearing is fast-paced. Shorn sheep are guided down chutes resembling slides at a park, while handlers classify the wool's quality before it's mechanically stuffed into bags.

When Krebs was growing up, his family stuffed round burlap bags, often 7 1/2 feet tall, with wool manually rather than mechanically.

"When I was little, they'd throw me in a bag and I'd have to work my way out," said Krebs.

He chuckled.

Krebs is not part of either the Levy or Corey side. The family hired him because he has a lifetime of industry knowledge; Krebs' family also runs an Eastern Oregon sheep business.

The farm hired Krebs in 2013 after their former Basque lead sheep herder, Juan Erice, retired.

To the mill

Once wool is bagged, it's shipped to Pendleton Woolen Mills.

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The mill and farm have a longstanding relationship built on trust. For decades, the mill has committed to buy the farm's wool at the best price it can afford to offer. Pendleton's wool buyer does a visual inspection, talks with the farm about the year's clip and negotiates a price.

"If you want to call it a handshake relationship, you can call it that," said Dan Gutzman, who manages Pendleton's wool buying department. "But it's one that's withstood (decades)."

Corey, of Cunningham Sheep Co., said Pendleton Woolen Mills has been loyal, buying the farm's wool even during difficult years.

Many factors drive the international wool market. Tariffs, disease outbreaks, drought and shipping congestion all impact pricing.

Pendleton Woolen Mills consumes about 2.4 million scoured pounds of wool annually — 40% from domestic growers, 60% from overseas — and Cunningham is one of the longest-standing suppliers.

Wool, however, isn't the farm's main money-maker. More profit comes from selling meat and breeding stock.

Registered, commercial flocks

Twilight lapped across the hills like a quiet tide near Pilot Rock, south of Pendleton.

Krebs, the foreman, with help from a Border Collie, led a pair of 300-pound rams through a gate.

These rams belonged to the farm's registered flock, comprised of sheep with fine wool and white faces that meet Pendleton's wool standards.

Each year, Krebs said, he sells about 100 top-quality rams as breeding stock.

Animals that don't meet the standards are in a commercial flock, many of which end up as meat.

Krebs keeps track of each animal's pedigree with electronic ear tags, which the farm started using four years ago. He said the tags provide him with data for targeted breeding.

Plus, Krebs said, he anticipates the meat market is moving toward consumers demanding more traceability — tracking with ear tags which animals have received antibiotics, for example.

"Traceability is coming," said Krebs. "We're trying to get ahead."

The sheep business' main profit comes from selling lamb through Stan Boyd, based in Eagle, Idaho, the farm's broker for the Rocky Mountain Sheep Marketing Association.

Krebs said he's pleased that demand for lamb is on the rise.

"I'm really optimistic," said Krebs.

He was interrupted by an uproar of dogs barking.

Cunningham Sheep Co. has about 40 farm dogs, each with different roles — working, herding, guarding — across a range of breeds including Border Collies, Turkish Kangal Shepherds and Great Pyrenees.

Some of the dogs protect sheep from predators.

Main challenges

Predator pressure is one of the main challenges the farm faces.

Last year alone, the farm had 17 confirmed sheep kills and two dog injuries from wolves. Those were just the confirmed cases. According to Corey, “It’s tough to get a wolf predation confirmed.”

The family says the farm is affected by the state’s decisions on wolf management.

“It’s not us making those rules. We just live and deal with them as best as we can,” said Corey.

To repel wolves, the farm has increased its number of guard dogs.

Krebs, the foreman, said the dogs take different roles. Some chase. Others bark. Yet others remain close to the sheep. Krebs said he doesn’t assign the dogs their roles; they decide.

“It’s like they have a coffee every morning and say, ‘You go here, I’ll go there,’” said Krebs.

He laughed.

The farm faces other challenges, too: the economy’s unpredictability, environmental regulations, the ongoing agricultural labor shortage and concern over the new farmworker overtime pay law.

Despite the challenges, Krebs said he’s fortunate to have a team of about six H-2A migrant guestworkers who follow the sheep on the range.

“We’ve got a terrific team, couldn’t have better,” said Krebs. “They’re just go-getters.”

Lambing barn

The next morning, Corey, Krebs, the herders and a veterinary student met at the lambing barn in Nolin, between Pendleton and Echo.

Beside the farm's Nolin headquarters, the Umatilla River, brown from rainstorms, meandered past cottonwoods and hills that buckled into each other.

In the river valley stood a grain elevator and nearby, the lambing barn.

According to the Oklahoma State University Extension Service, when Rambouillets lamb, only 20% to 35% have twins. This spring, Cunningham Sheep Co. birthed between 4,500 to 4,800 lambs out of 3,800 ewes — a good rate considering the breed and last year's drought.

Inside the barn, Leah Swannack, a Washington State University veterinary student doing a mixed-animal rotation at the farm, was moving between jugs — stalls holding a single ewe and her young — checking their health.

The Coreys and Levys say they're intentional about surrounding themselves with good veterinarians.

While Swannack did health checks, migrant workers labeled ewes and lambs with colored chalk-paint: blue for singles, red for twins. The farm also uses letters with different meanings: for example, "A" for "ayuda," Spanish for "help," painted on a lamb needing attention.

Even bumper lambs have their own warm, clean space with individual pens. Krebs jokingly calls this "The Hilton."

With such a large operation, it's crucial to be organized, he said.

The future

With younger faces on the family board and council, Corey said he looks forward to seeing how the farm innovates in the future.

Younger family members have bounced around ideas that may take shape, including harvesting more of the farm's timber, acquiring a small lumber mill and buying more land to expand pheasant hunting. Young family members have also talked about marketing lamb differently, with more direct sales under a brand name such as "Cunningham Lamb."

At this point, those ideas are still just that: ideas. But as new generations of the family take leadership, Corey anticipates the farm will adapt with the times.

In the meantime, consumers continue to see the farm's ripple effects far and wide: at the grocery store, on the landscape and woven into cloth in Pendleton Woolen Mills' 35 retail stores.

Correction

An earlier version of this story misstated that the family has land extending across Umatilla County and parts of Morrow and La Grande counties. It should have said Umatilla, Morrow and Union counties. La Grande is the county seat of Union County. The Capital Press regrets the error.

Attachment 2.

Legal Memorandum from Stoel Rives LLP, responding to Council members' apparent request for an analysis of alternatives to the proposed solar PV generation site

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

In the Matter of the Application for Site Certificate) LEGAL MEMORANDUM RE
for the Nolin Hills Wind Power Project) STATEWIDE GOAL 3
) EXCEPTION REQUEST;
) ALTERNATIVES ANALYSIS

On behalf of Capital Power (Nolin Hills), we submit this legal memorandum to address potential issues raised by Councilmembers at the May 26 DPO hearing concerning whether an “alternatives” analysis is needed or allowed as part of the Statewide Goal 3 exception request. This Memorandum is supported by the excerpts from the draft deliberation transcript, appended hereto, with highlights.

1. The Energy Facility Siting Council’s Goal 3 Exception Standards do Not Require an Alternatives Analysis.

In their deliberation at the May 26 DPO hearing, Councilmembers Jenkins and Howe both suggested that the Nolin Hills Statewide Goal 3 exception request should explain how the proposed location of the solar PV generation facility compares to other locations, including onsite and county-wide. (See preliminary transcript excerpts, attached hereto). The key question asked by both Councilmembers Jenkins and Howe was how the Nolin Hills solar PV facility, located in the heart of the wind energy generation site, in close proximity to the project substation and transmission line, compares to other onsite and offsite Umatilla County locations.

The Applicant is concerned that Councilmembers seem to suggest that an analysis of other alternative locations is needed to evaluate and justify the exception. If a request for an alternatives analysis was intended, we emphasize that such an analysis is not required nor allowed under EFSC’s unique Statewide Goal Exception standards.

In 2004, EFSC issued a Site Certificate for the COB Energy Facility, an 1100 MW natural gas generation facility proposed in Klamath County. Project opponents appealed the decision to the Oregon Supreme Court, with a final decision in 2005, unanimously denying the appeal. In the appeal proceedings, project opponents argued that as a mandatory part of the Goal 3 exception process, EFSC was required to evaluate other offsite alternatives. In *Save Our Rural Or. v. EFSC*, 339 OR 353, 121 P.3d 1141 (2005), the Oregon Supreme Court held that consideration of alternative locations is not required for EFSC Statewide Goal exceptions.

In the appeal, the project opponents contended that without an alternatives evaluation, EFSC had no frame of reference for analysis of the site and its impacts, compared to multiple potential other sites which might further minimize or avoid agricultural impacts. The Supreme Court rejected this argument, holding as follows:

Petitioners first argue that the council's analysis in taking an exception to Goal 3 was flawed because the council did not require the applicant to provide reasons why the proposed site was better suited than any other site. Petitioners assert that the council's order "ignores the myriad of possibilities of alternative locations consistent with the statewide planning goals." Respondents counter that petitioners seek an "alternatives analysis" for the proposed facility that the statutes do not require when the council, rather than a local government, takes an exception to a land use planning goal.

We agree with respondents. ORS 469.504(2)(c), quoted above, sets out the requirements that must be met for the council to take an exception to a land use planning goal. That statute has distinct similarities to ORS 197.732(1)(c), which was enacted 14 years earlier and which sets out the requirements for a local government to take an exception. However, the two statutes also have important differences, which we think are dispositive here. ORS 197.732, the statute relating to exceptions taken by local governments, provides, in part:

"(1) A local government may adopt an exception to a goal if:

"* * * * *

"(c) The following standards are met:

"(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

"(B) Areas which do not require a new exception cannot reasonably accommodate the use;

"(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts *are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site;* and

"(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

(Emphasis added). The emphasized text highlights one significant difference between ORS 197.732(1)(c) and ORS 469.504(2)(c): The former requires what the parties describe as an "alternatives analysis," i.e., a finding that the "environmental, economic, social and energy consequences" of using the proposed site are "not significantly more adverse" than those that would result from using an alternative site in an area requiring a goal exception.

* * *

In this case, a comparison of the two statutes makes clear that the legislature used ORS 197.732(1)(c) as the basis for the later-enacted ORS 469.504(2)(c) but omitted the requirement of an alternatives analysis. We therefore conclude that the legislature did not intend to require the council to perform an alternatives analysis in making a determination under ORS 469.504(2)(c) that an exception could be taken to a land use planning goal. Contrary to petitioners' argument, ORS 460.504(2)(c) does not require the council to compare an applicant's proposed site with other potential sites, and the council did not err in failing to do so.

Id at 370 – 372. (Emphasis in Supreme Court decision).

Holding that EFSC's specific Goal 3 exception rule does not require an alternatives analysis, the Court considered the substantial evidence in the record and concluded "that substantial evidence in the record supports the challenged factual findings." The Court reasoned that

"[a]lthough the change from water to air cooling appreciably diminished the proposed facility's need for water, the record shows that the amount of water used was not the only concern that led COB to request a water permit to use the deep underground wells at the proposed site. The evidence showed that the water supply is unique because it taps into an aquifer at a deeper level than other local water uses, providing the facility with an unusually stable water supply without affecting the supply to other local water users. The evidence also showed that the proximity of the site to an existing natural gas pipeline and to the major north-south electricity transmission line on the West Coast (as well as a substation on that line) made the site particularly suited for a gas-powered electricity generation facility. Other evidence showed that the facility needed a site of 50.6 acres. Each of the council's findings regarding the Goal 3 exceptions is supported by substantial evidence in the record.¹⁴

Footnote:

14. As noted above, and contrary to petitioners' argument here, ORS 469.504(2)(c)(A) does not require an alternatives analysis. Therefore, the council did not have to find that the proposed site was the only workable site or even the best site; it only had to find that reasons justified the use of that site. (Emphasis added).

Id at 373.

2. The Council has No Authority to Impose an Alternatives Analysis

Not only is EFSC not *required* to impose an alternatives analysis; EFSC has *no legal authority to do so*. Agency rulemaking, whether through adjudication or formally promulgated rules, "cannot amend, alter, enlarge upon, or limit statutory wording so that it has the effect of undermining the legislative intent." *Garrison v. Dept. of Rev.*, 345 Or 544, 549, 200 P3d 126, 128 (2008); *Miller v. Emp. Div.*, 290 Or 285, 289, 620 P2d 1377, 1379 (1980) ("An agency may not amend, alter, enlarge or limit the terms of a legislative enactment by rule."); *U. of Or Co-operative v. Dept. of Rev.*, 273 Or 539, 550, 542 P2d 900 (1975) (same). Moreover, where there is a complete expression of legislative policy, the agency has no discretion to add criteria not in the statute. *Springfield Ed. Assn. v. Springfield School Dist. No. 19*, 290 Or 217, 225, 621 P2d 547, 553

(1980) (“Because the definition was intended to be complete, there was no latitude for the agency to make its own legislative or policy decisions as to the coverage of the statute* * * .”); *Gouge v. David et al.*, 185 Or 437, 459, 202 P2d 489, 498 (1949) (“The statute is not a mere outline of policy which the agency is at liberty to disregard or put into effect according to its own ideas of the public welfare.”).

The long-standing judicial limitation in Oregon agency decision-making prohibits the expansion of agency rules beyond the legislative requirements and intent. Here, the legislature provided a complete expression of legislative policy. In EFSC Goal 3 exception proceedings, EFSC is prohibited from conducting or requiring an alternatives analysis, particularly offsite or county-wide.

3 Conclusion.

Capital Power has the unique opportunity to partner with one of Oregon’s most prominent and innovative, multi-generational agricultural landowners and operators. The Cunningham and Pendleton operations are committed to sustainability, excellence, and community enhancement. As should be clear to the Council from the testimony of Mr. Corey and Mr. Levy, these landowners are making commitments to a clean energy future, and the value of this project goes well beyond profit motive or hiring a few new employees. With an abundance of agricultural land holdings, these landowners are best suited to judge how their lands will be used for the most productive agricultural uses, while making the least productive lands available for clean energy development.

We understand that the Council seeks a better understanding of why the particular location identified for solar PV generation is well suited for a Goal 3 exception. We believe that by understanding the Exhibit K Goal 3 exception analysis (provided with this Legal Memorandum), and through the additional information and testimony submitted, the Council can and should conclude that a Goal 3 exception is warranted.

This project will enable a solar PV generation facility that advances Oregon’s state policy, achieving the complementary objectives of preserving and enhancing agricultural land use while also helping Oregon meet its climate change mitigation goals.

Respectfully submitted this 14th day of June 2022.



Timothy L. McMahan, OSB No. 984624
Stoel Rives LLP

**May 26, 2022 Energy Facility Siting Council
Deliberation re Statewide Goal 3 Exception Consideration for Nolin Hills Project**

Deliberation Excerpts with Highlights

Hanley Jenkins: I do have a rather lengthy list, um, and for the benefit of those that have a copy of the draft proposed order, I'm gonna go through, kind of by page, uh, reference to my comments. Um, got somethin', uh, some questions here so let me pause for a second and see if – are we good?

[Deleted text not relevant to Goal 3 exception issues].

*So, that gets me to, um, the issue that Tim focused on in his testimony, which is the Goal 3 exceptions process, um, and that begins on Page 114 in the, in the rule and I'm gonna go through some factual things that I agree with, um, and, um, and then I wanna get to kinda the crux of where I'm at on this issue. So, I agree there's 242 acres of high-value farmland associated with a solar site. So, this is in reference to the solar facility construction, um, and there's a hundred, uh, 1,840 acres of arable land, um, which has been cultivated in the past and it represents 37.8, or about 38 percent of the landowner's crop land in their ownership, which I think is fairly significant, uh, and so, I think that's important to recognize that this area proposed for the solar facility does represent a large portion of what is cropland on the applicant's property. I accept that it's not irrigated nor in an irrigation district, um, and this year it isn't even cropped. Um, but, it is arable land by definition, and it has been cropped in the past. I accept that the solar facility would not impact adjacent agricultural operations. We have testimony from adjacent landowners as well as the landowner that owns surrounding property to the proposed solar facility, um, and on our tour today, um, I did observe that most of that land around there is either fallow cropland or it's rangeland. Um, and I accept that there are financial benefits to the landowner that could be used to enhance other on-farm agricultural operations. I think, you know, that's important, um, but, uh, it, I don't think in and, it in and of itself is a basis for the exception. Um, I'm not sure that we want to be in the business of telling the county how to spend their SIP funds, um, to assure local agricultural economic benefits from those funds. **The applicant alleges this site would have the least impact on other on-property cultivated agricultural uses, um, um, but, there are no identified alternatives in the analysis area nor is one required by the EFSC rules.** Um, the applicant alleges the solar facility allows for integration with the wind facility, but hasn't guaranteed that and the staff's made that clear in the, in the draft proposed order. And the applicant alleges, um, this site would have minimal other environmental impacts that may be less than other portions of the subject property, um, but it still will have environmental impacts for this particular site. So, the point that I've made over the alt several meetings about taking exception to agricultural lands, is that this particular site is, in fact, cultivated agricultural land, or has been cultivated agricultural land and qualifies as arable land under the state land conversation commission administrative rules and we are taking an exception to statewide planning Goal 3 through this process specifically for this 2,000 acres and **I think that's the, the point that I've been trying to make is why is this particular portion of property, um,***

different than other cultivated property in Umatilla County and central Oregon. Um, and Tim uses the word unique. It don't think it's one of a kind. I think that the exceptions process could be met on other properties, but I do think that the reasons that are necessary for justifying the exceptions have to be specific to this particular property. I don't think the applicant has shown why this particular portion of cropland is any different than any other cropland in the region and I think that's where I'm having difficulty with agreeing with the exceptions that has been presented to us and so, my point is we have, it may not be unique, as Tim has described, but it has to be, there have to be reasons why this parcel versus any other parcel in central and eastern Oregon that is in cultivated cropland, and why is it different? Um, and why should it be exempt from protection of agricultural lands where other property is subject to those, so that's kind of where I stand on this. Thank you.

[Deleted text not relevant to Goal 3 exception issues].

Kent Howe Discussion of Statewide Goal 3 exception:

Kent Howe: Okay, I want to, uh, follow up on the Goal 3 exception issue as well and, um, I, rather than reiterating what Hanley just said, or Mr. Jenkins, uh, I agree with what Counselor Jenkins has said and I'm gonna try to add a little bit more to it that may help the applicant in getting to, um, additional information that I feel we need in order to, um, make a finding that the Goal 3 exception has been met, and, uh, first of all, taking an exception to Goal 3 has a very high threshold. It, it's the way in Oregon that we allow removing agricultural land from Oregon's agricultural land inventory. The burden's on the applicant to provide us with adequate reasons from which we can make findings that we can use to adopt our own conclusions of law in support of the application and, uh, I don't think unique is the word that we want to use here. It's not that it's the only place that his could occur, but what are the reasons that sets it aside this, this location was 19, roughly 1900 acres, what sets those 1900 acres aside from the other 227,300 acres in Umatilla County that's in dryland winter wheat. Otherwise, it's not an exception to the rest of the dryland winter wheat fields in Umatilla County, if it's, if we're not making something that distinguishes it from those other lands. And so maybe it's not the reasons of why it's unique, but the reasons that distinguishes the loss of that agricultural land for the solar facilities proposed is different from the other 227,000 acres that would allow us to take that exception to Goal 3 and justify removing it from Oregon's agricultural land inventory. Um, you know, I don't know what it is. Maybe it's its proximity to the wind turbine facility and the adjacent ancillary facilities. Maybe it's topography. There needs to be something besides the fact that it's, you know, eight tenths of a percent of the dryland wheat that's harvested in um, Umatilla County, of the acreages of dryland wheat that's harvested and just that statistic doesn't cut it for me. It doesn't really distinguish it from those other 227,000 acres of dryland wheat in Umatilla County.

So, that's what I'm gonna need in order to be able to say we've got adequate, um, findings to justify an exception to Goal 3 for the acreage that the solar facility would be placed on. That's my comments.

Attachment 3.

The Statewide Goal 3 exception analysis, extracted from ASC Exhibit K

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Nolin Hill Wind Project

Goal 3 Exception Analysis

Extracted from the Final ASC Exhibit K

Nolin Hills Wind Power Project

June 2022

Prepared for



d/b/a Nolin Hills Wind, LLC

Prepared by



Tetra Tech, Inc.

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1.0 Introduction

This document has been prepared on behalf of Capital Power, Nolin Hills Wind LLC (Applicant) in response to the comments made by members of the Energy Facility Siting Council (EFSC or Council) at the public hearing held on May 26, 2022 on the Draft Proposed Order on the Application for Site Certificate for the Nolin Hills Wind Power Project (Project). Specifically, this document responds to the comments made regarding the Applicant's request for a Statewide Planning Goal 3 exception.

The Project is located in Umatilla County and includes both a wind and solar energy facility with a combined nominal generating capacity of approximately 600 megawatts (MW; preliminarily 340 MW from wind and 260 MW from solar). As discussed in more detail below, the Project's solar generation facilities would be sited within a 1,896 acre solar siting area (Figure C-5), which would permanently occupy more than 12 acres of high-value farmland (high-value farmland due to the AVA designation per Oregon Revised Statute (ORS) 195.300(10)(f) only) and 20 acres of arable land. Pursuant to Oregon Administrative Rule (OAR) 660-033-0130(38), siting of the Project's solar generation facilities requires an exception to Statewide Planning Goal 3.

The information below has been extracted from Exhibit K and provides the Council a description of the solar siting area's agricultural value and characteristics and demonstrates that an exception to Statewide Planning Goal 3 is justified under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). Additional information from the Project's landowners regarding the agricultural characteristics and current land use status of the solar siting area has also been incorporated into this document (Figure K-3).

2.0 Existing Land Use and Agricultural Value and Characteristics

The entire solar siting area and most of the Project Site Boundary is within Umatilla County's Exclusive Farm Use Zone designation. OAR 660-033-0120 specifies development and uses allowed on Agricultural Lands. Pursuant to OAR 660-033-0120, wind power generation facilities must comply with the standards set forth in OAR 660-033-0130(5) and (37) and photovoltaic solar power generation facilities OAR 660-033-0130(5) and (38). The standards set forth for photovoltaic solar power generation facilities under OAR 660-033-0130(38) are based in part on the designation of high-value farmland described under ORS 195.300(10) and the arable vs. non-arable characteristics of the land.

2.1 High-Value Farmland

Exhibit K, Section 4.2 analyzes how much of the area within the Project Site Boundary (48,196 acres), the Analysis Area for Exhibit K (79,174 acres), and the solar siting area (1,896 acres) meets

the definition of high-value farmland under ORS 195.300(10)(a), (c), and (f). These provisions are summarized below:

- ORS 195.300(10)(a) relies on criteria related to soil types as classified by Natural Resources Conservation Service (NRCS). It includes land in a tract² composed predominantly of soils that are irrigated or not irrigated, and classified as prime, unique, Class I, or Class II.
- ORS 195.300(10)(c) relies on the land in the EFU zone being located within a place of use water right, an irrigation district, or a diking district.
- ORS 195.300(10)(f) relies on the land in the EFU zone being located within the boundaries of the Columbia Valley viticultural area (see 27 Code of Federal Regulations Part 9, Subpart C - Approved American Viticultural Areas, Section § 9.74 Columbia Valley)—and meeting certain elevation (below 3,000 feet), slope (between zero and 15 percent), and aspect (between 67.5 and 292.5 degrees) criteria.

None of the land within the solar siting area meet the definitions of high-value farmland per ORS 195.300(10)(a) and (c) as there are no NRCS Class I or II soils (Figure K-4), nor are there any place of use water rights, irrigation districts or diking district within the solar siting area. However, the entirety of the solar siting area (and Project Site Boundary and Analysis Area) is within the Columbia Valley American Viticultural Area (AVA) and high-value farmland per ORS 195.300(10)(f) occurs on a patchy basis throughout solar siting area (see Figure K-6.1). In total, of the 1,896 acres within the solar siting area, approximately 242 acres (13 percent) is classified as high-value farmland under ORS 195.300(10) (see Table K-1). Therefore, the 242 acres of high-value farmland present in the solar siting area does not have any of the soils characteristics or irrigation water availability necessary to qualify as high-value farmland under ORS 195.300(10) and would not be considered high-value farmland if it were not in the AVA designation.

2.2 Arable Land

Arable land, arable soils, non-arable land, and non-arable soils are terms defined under OAR 660-03309130(38):

OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land

² "Tract" means one or more contiguous lots or parcels under the same ownership.

use application, but “arable soils” does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

.....

(d) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(e) “Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

As shown in Table K-1, most of the land in the Site Boundary, Analysis Area, and solar siting area is arable. The solar siting area is comprised of 1,840 acres of arable lands (NRCS capability class 3) and 56 acres of non-arable soils (NRCS capability class 7). Figure K-8.1 shows the arable and non-arable land within the solar siting area. The solar siting area represents 9.1 percent of the total arable land within the solar siting area’s subject tracts (Tracts 3, 8, 11, and 14, see Figure K-8.1), 4 percent of the total arable land within the site boundary.

Figure K-10 shows the extent of historically cultivated land in the solar siting area. Because irrigation is not available for the solar siting area, the land has historically been cultivated as winter wheat. However, due to low production averages, the solar siting area has not been cultivated for several years and this land has been taken out of agricultural production and is currently conservation reserve program (CRP) land as the soils met the weighted average erosion index of eight or higher as well as meeting other requirements to be eligible for CRP (USDA 2019). The arable lands within the solar siting area represents approximately 6.6 percent of the underlying landowners’ total cropland area and 2.5 percent of the underlying landowner’s overall agricultural operations.

Table K-1. High-Value, Arable, and Nonarable Lands In and Around the Site Boundary and Micrositing Corridors

Land Type	Acres/Percent in Analysis Area	Acres/Percent in Site Boundary	Acres/Percent in Micrositing Corridors	Acres/Percent in Solar Siting Area
High-value farmland ¹	28,420/36%	11,634/24%	4,553/29%	242/13%
Arable ²	64,155/81%	37,761/78%	13,939/88%	1,840/97%
Nonarable	14,893/19%	10,412/22%	1,786/11%	56/3%
1. High-value farmland designations per ORS 195.300(10)(a), (c), and (f). The Project would impact a total of 283.7 acres of high-value farmland, based on the footprint presented in Exhibit C. 2. Arable includes Class I-IV soils, cultivated land regardless of soil class, and high-value lands and soils.				

3.0 Goal 3 Exception Criteria and Justification

As discussed above, the Project’s solar generation facilities would permanently occupy more than 12 acres of high-value farmland (high-value farmland due to the AVA designation per ORS 195.300(10)(f) only) and 20 acres of arable land. Pursuant to OAR 660-033-0130(38), siting of the Project’s solar generation facilities requires an exception to Statewide Planning Goal 3. This exception is justified under ORS 469.504(2), which provides the controlling criteria for exceptions that are proposed for energy facilities under the jurisdiction of the Council. The Applicant demonstrates that an exception to Statewide Planning Goal 3 is justified for the Project in this section.

Per ORS 469.504(2), an exception may be taken on any of three grounds:

- That the land is “physically developed to the extent that the land is no longer available for uses allowed by the applicable goal”;
- That the land “is irrevocably committed ... to uses not allowed by the applicable goal”; or
- That certain standards are met because the facility is compatible with existing adjacent uses and other relevant factors are met; or what is referred to as a “reasons” exception.

The solar siting area is not “physically developed” or “irrevocably committed” within the meaning of the rule. Therefore, the Project’s justification for an exception to Statewide Planning Goal 3 is demonstrated under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). An exception is warranted to allow a locationally dependent facility that will fulfill important state and county goals, by providing renewable energy while minimizing impacts on local farming practices.

For purposes of the Goal 3 exception analysis, the Applicant analyzes the acreage footprint within the solar siting area (1,896 acres).

3.1 Demonstration that a “Reasons” Exception is Appropriate

ORS 469.504(2)(c)(A); OAR 345-022-0030(4)(c)(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

The state policy embodied in Goal 3 is the preservation and maintenance of agricultural land for farm use. OAR 660-033-0120 allows photovoltaic solar power generation facilities on agricultural land, subject to certain conditions. These conditions limit a photovoltaic solar power generation facility from using more than 12 acres of high value farmland or more than 20 acres of arable soil. Therefore, it is the size of the solar generation facility and not the proposed use that requires an exception be taken.

As discussed further below, the Project’s solar facility will not result in significant adverse impacts on accepted farm practices for surrounding agricultural lands. Moreover, as discussed in Section 4.4.1 of Exhibit K, the Project is consistent with the Agricultural policies in the Umatilla County Comprehensive Plan (UCCP), which implements the statewide planning goals. Oregon’s Statewide

Planning Goals express the state’s policies on land use, which are implemented through the adopted comprehensive plan and the zoning ordinances of the local cities and counties. Statewide Planning Goal 13 encourages local land use plans to consider “as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output” and calls for land conservation and development actions to “whenever possible [...] utilize renewable energy sources” (see Goal 13, planning guideline No. 5). The UCCP is consistent with the Statewide Planning Goals, and UCCP Chapter 16: Energy Conservation, has several policies that mirror the planning and implementation guidelines stated under Statewide Planning Goal 13, including acknowledging that “[e]scalating cost of depleting nonrenewable energy sources make renewable energy source alternatives (e.g. solar, wind) increasingly more economical, and help conserve existing energy supplies.”

In addition to responding to the County’s need for development of renewable energy to conserve existing energy supplies, the Project’s solar energy generation facilities respond to the State’s RPS, which requires 50 percent of Oregon’s electric load to be sourced from new renewable energy by 2040. The Project will provide approximately 260 MW of renewable solar generated energy and 340MW of renewable wind generated energy, and thus assist the State of Oregon with its mandate to meet the RPS. The Applicant plans to respond to requests for proposals from Oregon utilities if and when available.

Besides the Project being consistent with and implementing local and state energy policies above, the following reasons justify removing approximately 1,896 acres from commercial agricultural use within the solar siting area temporarily (long-term lease), consistent with energy policies of importance within the county and across the state and region.

3.1.1 Minimal Impact to Agriculture

Minimal Direct Loss of Agricultural Land. The removal of the solar siting area would result in only minimal direct loss of agricultural land. Because irrigation is not available for the solar siting area, the land was historically cultivated as winter wheat. The solar siting area would temporarily remove up to approximately 1,896 acres of land historically farmed for dryland winter wheat. According to the U.S. Department of Agriculture (USDA) 2017 Census of Agriculture, this is approximately 0.1 percent of the total acres of land in farms in Umatilla County (1,352,241 acres), and equivalent to 0.2 percent of total cropland (815,962 acres) and 0.5 percent of acres harvested (406,088 acres) in 2017 (USDA 2019). Based on data from the Oregon Department of Agriculture and the USDA, dryland wheat harvest totals in Umatilla County were approximately 223,500 acres and 227,300 acres in 2018 and 2019, respectively (USDA 2019; ODA 2021). Therefore, the removal of the solar siting area would result in an approximately 0.8 percent reduction of dryland wheat harvest within Umatilla County.

Even considering a study area smaller than Umatilla County, the impacts are minimal. The solar subject tracts, which include Tracts 3, 8, 11, and 14 (Figure K-8.1), total approximately 28,138 acres. Of this, the proposed 1,896-acre Goal 3 exception represents approximately 6.7 percent of the total area, and 9.1 percent of the total arable land within the subject tracts. Thus nearly 19,000

acres of arable land in the subject tracts would remain available for agricultural uses. While the Project would represent a larger percentage of the current dryland wheat area within the subject tracts (approximately 37.8 percent), it remains a much smaller percentage—approximately 6.6 percent of the underlying landowners' total crop lands in Umatilla County and 2.5 percent of the underlying landowner's overall agricultural operations, which are not limited to the subject tracts and provides a more relevant scale for considering the impact (discussed further below).

Minimal Impact on Remaining Farm Operation. The solar siting area is owned by a single landowner, the Cunningham Sheep Company/Pendleton Ranches.³ In Umatilla County, the landowner owns approximately 75,000 acres of agricultural land, which is used primarily for ranching (about 60 percent) and dryland wheat (about 37 percent), with a small amount of alfalfa fields. The 1,896-acre Goal 3 exception represents approximately 6.6 percent as noted above, of their total agricultural cropland. This reduction would not result in an adverse impact on the remaining agricultural operation of the landowner; to the contrary, the Project's lease payments would support investment in ongoing agricultural operations on more active land elsewhere in their portfolio, increasing the long-term viability of their overall farm operation. According to the landowner, the Project will not result in any loss of employees for their operations, and may actually add agricultural jobs to their current payroll. These lease payments are discussed in more detail below as part of the economic benefit discussion.

Minimal Impacts on Surrounding Agricultural Lands. The solar siting area is surrounded on nearly all sides, for approximately 95.5 percent of its perimeter, by landowners participating in the Project (Figure K-10). The participating landowners have no concern regarding their ability to continue agricultural activities outside of the solar siting area. The closest non-participating farmland property is adjacent to the solar siting area along approximately 0.5-mile of its western edge, approximately 123 feet apart on the opposite side of the paved Speare Canyon Road (County Road 1350) to the west. This is one of two property "cut-outs" in the Site Boundary that are otherwise surrounded by land within the site boundary (see Figure K-10). The land is cultivated, dryland, with no associated water rights according to data available from the Oregon Water Resources Department (2021). While this landowner⁴ is not participating in the Project, the Applicant has been in communication with the landowner as part of early Project development. Attachment K-1 includes a letter for the record from this landowner indicating that they have no concerns regarding the construction and operation of the solar facility across from their land and do not anticipate any impact to their farm practices, including any indirect increases in costs of their farm operations or a change in existing or anticipated farm practices.

As noted above, other than this single, approximately 150-acre parcel, the remainder of the solar siting area is surrounded by land owned by participating landowners, primarily the same landowner as the solar siting area—Cunningham Sheep Company/Pendleton Ranches—and one

³ The solar siting area includes portions of tax lots with owners recorded by Umatilla County as Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches. Each of these entities are controlled by a single landowner family.

⁴ The landowner is James Kirkham, recorded by Umatilla County as KIRKHAM STELLA 1/2 ETAL 1/2; CADBY MARY E & PAT L (TRS) 1/2 ETAL 1/2.

additional participating landowner adjacent to the east end of the solar siting area, Buttke Ranch, LLC. The land of these participating landowners around the solar siting area is non-cultivated and open for grazing to the north and east, with a small extent of dryland wheat along the south side (Figure K-10). The next-closest non-participating landowner⁵ is located approximately 0.5 mile to the east of the solar siting area, the second Site Boundary “cut-out.” This property is not currently cultivated, though could be used for grazing. The remaining non-participating farmland properties are all located outside of the external edge of the Site Boundary and range from 0.7 mile to over 7 miles from the solar siting area. All existing farming practices would continue without any significant changes or additional costs of farming as a result of the construction and operation of the solar facility. Attachment K-1 provides a letter from the primary participating landowner confirming that the Project would not hinder, and in fact would enable enhancements to, existing farming and ranching operations.

Practices for dryland wheat farming include the use of a fallow period in a crop rotation, terracing or contour plowing, eliminating weeds and leaving crop residue to shade the soil, cover cropping, and strip cropping. Some farmers use a no-till method in which the field is sprayed with an herbicide following harvest and crop stubble is left on the field during periods when the field is fallow. Establishment of field crops includes weed control, field preparation, seed bed preparation, fertilization, and seeding or planting of the crop. Herbicides may be applied prior to field cultivation where perennial weeds or a heavy sod are present. None of these typical practices would be affected by the construction and operation of a solar facility on a neighboring property, as discussed below.

Impacts from construction ground disturbance are limited to the direct footprint of the Project; any potential off-site soil impacts, including dust, are strictly controlled to comply with the NPDES 1200-C construction permit pursuant to the Project’s Erosion and Sediment Control Plan (ESCP) (see Attachment I-1 in Exhibit I). It is possible that limited dust generated by construction activities within the solar siting area could travel to neighboring properties. However, this is not expected to impact accepted farm practices or increase the cost of those practices for three main reasons:

- 1) Dust will be effectively controlled during construction to comply with the NPDES 1200-C permit, resulting in no or negligible dust on off-site land. Measures include but are not limited to:
 - a. Water trucks patrolling the site, as often as one pass per hour, wetting down disturbed and exposed soils, resulting in no or negligible dust on off-site land⁶;
 - b. Maintaining a tightly sequenced construction schedule, limiting the extent of exposed soils at any given time;

⁵ The landowner is recorded by Umatilla County as Peterson, Homer W.

⁶ Water trucks will be used to control dust generation in all disturbed areas during road construction; foundation installation; turbine and transmission structure erection, and final cleanup, reclamation, and restoration. Depending on weather conditions, water trucks patrolling the site to control dust will make as many as one pass per hour, wetting down disturbed and exposed soils. Once site preparation work is complete, meaning all soil disturbance is completed and the site is ready for revegetation, dust control becomes minimal.

- c. Applying hydromulch or other agriculture-safe tackifier on road shoulders, soil stockpiles, and other locations as appropriate;
 - d. Applying soil stabilization measures immediately on all disturbed areas as grading progresses and for all roadways, including graveling roadways;
 - e. Avoiding grading work during high-wind conditions, e.g., 20-25 miles per hour wind speeds; and
 - f. Requiring reduced speeds on construction access roads.
- 2) With the exception of one parcel, the solar siting area is surrounded by non-cultivated land with no farm practices to impact, owned by landowners participating in the Project; and
 - 3) For the one non-participating parcel on the opposite side of County Road 1350, west of the solar siting area, the potential negligible level of dust from Project construction would be limited to a short-term, temporary period, the timing of which would be coordinated between the Applicant and landowner to further minimize any potential impact.

In addition, the following measures and reasons support a finding that granting the Goal 3 exception would have minimal impact on surrounding agricultural lands:

- Project access roads and other facilities will be constructed and maintained by the Applicant such that the cost burden for maintenance does not fall upon the farm or ranch owners.
- While some increase in traffic is anticipated during construction, Exhibit U demonstrates that the temporary increase in the level of traffic will not significantly impact the existing level of service on local roads. Therefore, construction traffic will not interfere with harvest time activities such as tractor movement between fields or trucks delivering agricultural products to market.
- The Project will not limit or impact current or future farm activities on the surrounding land and will not diminish the opportunity for neighboring parcels to expand, purchase, or lease any vacant land available for agricultural uses (see Attachment K-1).
- The Applicant will implement a weed control plan during construction and operation that will reduce the risk of weed infestation in cultivated land and the associated cost to the farmer for weed control (see Attachment P-4 to Exhibit P for weed prevention and control measures).
- Construction and operation of the solar facility will not affect the application of pesticides or fertilizers using ground-based methods or aerial spraying, to the extent this occurs or could occur in the future on surrounding lands.
- The Applicant will consult with area landowners during construction and operation of the Project to determine further measures to reduce or avoid any adverse impacts to farm practices on surrounding lands and to avoid any increase in farming costs.

Therefore, for all of the reasons outlined above, the impact of the solar facility would have a minimal impact on surrounding agricultural lands, and would not force a significant change in accepted farm practices or significantly increase the cost of farm practices on those lands.

Lack of Water Availability. The land within the solar siting area has no associated water rights, has no active or historic rights that have been canceled, and is not in an irrigation district (OWRD 2021). There are also no irrigation water rights adjacent to the solar siting area (OWRD 2021). The closest water right is on one of the subject tracts, Tract 3; however, this is a right for livestock and fish and wildlife (Certificate 70939, Signed 1996). Current livestock operations occur outside of the solar siting area, and would not be inhibited by implementation of the Project. No wells or ponds are present within the solar siting area. While there is no known limitation to apply for a water right within the solar siting area, the landowner does not have any plans to do so at this time or for the foreseeable future. Moreover, the long-term loss of the land used for agricultural uses (approximately 1,896 acres) is insignificant when considering the other available agricultural land in Umatilla County, especially the irrigated land in the north end of the county that is irrigated by the Columbia, Umatilla, and Walla Walla rivers. In the Columbia Plateau region, the availability of water for irrigation is limited, but when available, irrigation typically leads to a substantial increase in the farming productivity of the land.

3.1.2 Local Economic Benefits

The solar energy facility will provide local economic benefits by varying means. The Project will have positive economic and social benefits by bringing additional revenue to local farmers and to the community by providing full-time jobs, construction jobs, compensation to landowners via commercial contracts including leases, improvements to the local road network, taxes, and community service fees. Because much of Umatilla County is EFU-zoned, these local economic benefits will largely support EFU zoning uses and agricultural uses.

Benefits to Landowners. Lease payments will supplement the landowner's agricultural income with predictable payments (see Attachment K-1). These payments stabilize their agricultural use by diversifying their income sources while not restricting their ability to operate the remaining portions of the parcels for the solar siting area as well as other surrounding lands and elsewhere in their ownership. The average price for winter wheat in Oregon in 2019 was \$5.73 per bushel (ODA 2021), which, based on agricultural budget information developed by Oregon State University, is less than the total production costs per bushel of \$6.09 to \$9.14 in 2019 dollars (OSU 2012). This leads to periods where the land may be operated at a loss. Ultimately, wheat prices fluctuate, as exemplified by the 2011-2019 period when average prices ranged from \$4.44 per bushel in 2016 to \$8.04 per bushel in 2012 (ODA 2021), affecting landowners' ability to predict net revenues and maintain their income level. Conversely, the lease payments will remain the same, providing a committed income source so that farmers may continue to farm the rest of their land. As confirmed by the landowner (Attachment K-1), the lease payments exceed the potential revenues from dryland wheat production.

Farmers often look for supplemental revenue or to subsidize their income, such as by enrolling portions of their land in the CRP. However, the CRP only typically applies to a parcel for 10 to 15 years. In addition, the CRP is currently authorized by legislation, is legislatively reviewed and changes every 5 years, and is therefore susceptible to budget cuts or curtailment, making it less of a reliable source of revenue for farmers. Although the renewable energy leases are temporary, and thus are only a temporary change to the land use, they provide for a longer lease time of approximately 30 to 50 years, potentially three times longer than CRP enrollments. The landowner would maintain lands available for agricultural use and, based on lease payments from the Applicant, would receive a net benefit in revenue compared to the value of dryland wheat cultivation for at least 30 years, the current estimated life of the Project.⁷

The landowner has confirmed that their intent is to use the lease payments to continue to invest in agriculture and local ventures. Furthermore, the landowner anticipates that no agricultural jobs would be lost, and may be able to add agricultural sector jobs to their operation due to implementation of the Project. This is a benefit not only to the landowner but to the local agricultural economy. Moreover, the shift to Project use would not reduce the landowner's current agricultural operational spending with local suppliers and service providers given the remaining 97.5 percent of their operations (over 73,000 acres) that will continue with increased investment, avoiding any related indirect adverse economic impact. In fact, as described in Attachment K-1, the landowner expects to maintain or more likely increase operational spending with local agricultural suppliers and service providers as a result of lease payments from the Project.

Benefits Local Economy – Employment. The Project is anticipated to result in significant job creation during construction, with a peak of up to 500 workers directly employed on-site; conservatively assuming only 30 percent of those are hired locally, that would provide jobs for 150 local workers.⁸ Project-related spending would also support economic activity elsewhere in the local economy due to increases in supply chain purchases (indirect effects), as well as project-related spending by local households (induced effects). Spending by non-local workers temporarily relocating to the area would also support local economic activity. Recent estimates suggest that every direct job in energy construction in Oregon supports 0.69 secondary (indirect and induced) jobs elsewhere in the local economy (ECONorthwest 2021). Applying this ratio suggests that, during peak construction, approximately 345 secondary jobs would be supported elsewhere in the local economy. Once construction is complete, the Project will maintain 10 to 15 permanent full-

⁷ A participating landowner, Cunningham Sheep Company, confirmed that the value of the lease payments from the Applicant for land that will be used for the Project will “substantially exceed revenues from the present dry land wheat farming” and will “be a net benefit in revenue compared to the value of dry land wheat cultivation.” (Letter to ODOE dated March 15, 2021 [see Attachment K-1]).

⁸ This assumption is particularly conservative with respect to the solar workforce where local hires typically make up a larger share of the overall construction workforce. The 2018 National Solar Jobs Census, for example, profiles a construction firm that provides Engineering, Procurement, and Construction (EPC) contracting services for utility-scale PV solar projects, noting that the firm typically performs about 1 million labor hours for solar projects, with direct hires from local communities accounting for over 60 percent of the total work performed. Another utility-scale EPC firm cited in the 2018 National Solar Jobs Census indicated that 90 percent of the construction workforce for an 80 MW project is typically hired from the local community (The Solar Foundation 2018).

time positions, generating employment income and associated indirect and induced economic benefits over the life of the Project.

Umatilla County was identified as an economically distressed area by the Oregon Business Development Department in its most recent annual list, published December 31, 2020 (Business Oregon 2021a). Distressed areas are identified using an index calculated using four composite factors: unemployment rates, per capita income, changes in the average covered payroll per worker, and changes in total employment (Business Oregon 2021a). In 2019, the estimated poverty rate was 14.5 percent in Umatilla County compared to a statewide average of 11.4 percent (U.S. Census Bureau 2021). Like other counties and communities in Oregon, unemployment increased sharply in April and May 2020 as a result of the pandemic. Monthly unemployment rates have since dropped but continue to be higher than pre-pandemic rates (Oregon Employment Department 2021). Increased economic activity, as discussed above, would provide direct employment for local workers as well as support jobs elsewhere in the local and regional economy.

Moreover, the wages for jobs related to the solar facility would provide a valuable opportunity in Umatilla County. Estimated mean hourly and annual wages for solar construction occupations in Oregon are summarized by labor discipline in Table K-3. Estimated mean hourly wages in May 2020 ranged from \$21.59 for construction laborers to \$52.85 for construction managers. The mean annual wages shown in Table K-3 are all higher than the average annual wage for Umatilla County, which was \$42,784 as of 2019 (BEA 2020). These data include wages and salaries only and do not include paid benefits.

Table K-2. Estimated Mean Hourly and Annual Wages by Solar Construction Occupation in Oregon

SOC Code ^{1/}	Labor Discipline	Mean Hourly Wage ^{2/}	Mean Annual Wage ^{2/}
11-9021	Construction Managers	\$52.85	\$109,930
47-1011	First-Line Supervisors of Construction Trades and Extraction Workers	\$37.42	\$77,820
47-2061	Construction Laborers	\$21.59	\$44,920
47-2073	Operating Engineers and Other Construction Equipment Operators	\$29.14	\$60,610
47-2111	Electricians	\$36.56	\$76,040
47-2231	Solar Photovoltaic Installers	\$27.78	\$57,790
47-4011	Construction and Building Inspectors	\$35.13	\$73,060
53-3032	Heavy and Tractor-Trailer Truck Drivers	\$23.98	\$49,880

Source: BLS 2021b.

SOC = standard occupational classification

1. Data are for May 2020, the most current data available.
2. These wage estimates represent wages and salaries only, and do not include employee bonuses or nonwage costs to the employer, such as health insurance or employer contributions to retirement plans.

Data compiled by the U.S. Bureau of Labor Statistics (BLS) (2021a) indicate that paid benefits to workers in the construction sector averaged \$12.38 per hour in June 2021 and accounted for 30 percent of total compensation, with wages and salaries accounting for the remaining 70 percent. This estimated average includes paid leave, supplemental pay, insurance, retirement and savings, and Social Security, Medicare, and unemployment insurance.

Following construction, one to two full-time operational staff directly employed by the Applicant may be dedicated to the solar facility. The Applicant anticipates additional work to be completed by a variety of third-party service providers. Estimated mean hourly wages for solar technicians would be \$29.14 per hour (Table K-3). The mean hourly wage for office and administrative support occupations was \$20.76 per hour in Oregon in May 2020. Mean hourly wages for management occupations and power plant operators range from \$49.22 to \$53.74 (BLS 2021b).

Total employee compensation paid to operation workers will include wages and salaries as well as benefits such as health insurance and retirement plans. Paid benefits composed 31 percent of total compensation for civilian workers in June 2021 (BLS 2021a).

Benefits to Local Economy – Government and Agricultural Sector. The proposed solar energy facility would generate significant economic benefits for Umatilla County, and ultimately the overall agricultural sector. As noted in ODOE’s memorandum dated October 6, 2021, local economic benefits associated with a proposed solar facility typically include lease payments to underlying landowners (discussed above), direct economic benefits to local governments, and various other direct and indirect benefits to the local economy. The following assessment estimates the direct benefits to local governments that would be generated in the form of property tax revenues. The Project has not entered into any property tax agreements to date and the assessment therefore considers a range of possible property tax scenarios.

3.1.2.1 Background on Renewable Energy Incentives

The following discussion provides an overview of two types of renewable energy incentives that are available for renewable energy projects in Umatilla County: the Strategic Investment Program (SIP) and the Fee in Lieu of Property Taxes for solar projects program.⁹

Strategic Investment Program

The SIP is a state-administered program that offers a 15-year property tax exemption on a portion of large capital investments. To qualify, a project must serve a “traded sector” industry, which is defined by Oregon law as an industry in which “member firms sell their goods or services into markets for which national or international competition exists” (Business Oregon 2021b). Renewable projects are an accepted industry for the SIP. To qualify for the exemption, a project

⁹ A third type of renewable energy incentive is offered in Oregon through the Rural Renewable Energy Development (RRED) Zone program. RRED Zones are a type of enterprise zone that offer a tax exemption incentive to encourage new investments in renewable energy (Business Oregon 2021a). The Project is not located in an RRED Zone and this program is not discussed further here.

must either receive local approval through a negotiated agreement between the project owner and the affected local government, or be located in a pre-established Strategic Investment Zone (SIZ).¹⁰

The property tax exemption applies to the portion of the project’s real market value that exceeds an initial taxable portion. In non-rural areas, the initial taxable portion is \$100 million. In rural areas, the initial taxable portion depends on the size of the investment, as shown in Table K-4. Following approval, the taxable portion increases 3 percent per year until the abatement ends after 15 years. In order to qualify, the overall project cost must be at least \$25 million in a rural area and \$100 million in non-rural areas.

Table K-3. Initial Amount of Investment Subject to Property Taxes in Rural Areas

Total Investment Costs	Initial Taxable Portion
Up to \$500 million	\$25 million
From \$500 million to \$1.0 billion	\$50 million
Greater than \$1.0 billion	\$100 million

Under the SIP, the project pays property tax on the initial taxable portion of the assessed value. In addition, the project pays a community service fee equal to 25 percent of foregone tax (up to \$2.5 million) and may also make additional payments as negotiated with the county. The amount of tax savings provided by the SIP depends on the terms of the agreement negotiated between the project and the affected local government, specifically the amount of additional payments, if any. Past examples of SIP agreements negotiated for renewable energy projects have included a minimum payment per MW that includes the required property tax and community service fee payments, as well as an additional payment to the local government. In these cases, the negotiated additional payment amount is the difference between the total per MW payment and the required property tax and community service fund payments.

Property taxes paid on the taxable portion are distributed to the local taxing districts with property tax authority in the code area or areas where the project is located.¹¹ The community service fee payment and any negotiated amounts are distributed based on agreements between the county and local taxing districts.

The Project is anticipated to enter into a SIP agreement with Umatilla County, but this has not yet been negotiated. Umatilla County does not have a designated SIZ (Business Oregon 2021b).

Fee in Lieu of Property Taxes for Solar Projects

In 2015, the Oregon legislature passed an act temporarily authorizing counties to enter into a Fee in Lieu of Property Taxes agreement with solar project owners. Under this type of agreement, a solar

¹⁰ SIZs are designed to provide a more streamlined local process. There are currently three SIZ in Oregon: Gresham SIZ #1, Clackamas Rural SIZ #1, and Clackamas Urban SIZ #2 (Business Oregon 2021b).

¹¹ Individual government units with property tax authority in Oregon, include counties, cities, school districts, hospitals, libraries, and fire districts. These government units, known as taxing districts, combine to form tax code areas, which represent unique combinations of overlapping taxing districts.

project may be exempt from property taxes for up to 20 years, contingent on the annual payment to the county of a flat fee of \$7,000 per MW of nameplate capacity (Business Oregon 2021c). This program cannot be used if the project is approved for another type of exemption (e.g., a SIP or RRED zone). Initially set to expire in January 2022, the passage of Oregon Senate Bill 154 (effective September 25, 2021) extended the expiration date to January 2028 and also modified the fee amount from \$7,000 per MW per year to a range of \$5,500 to \$7,000 per MW (ODOE 2021).

The Project does not anticipate entering into a Fee in Lieu of Property Taxes agreement with Umatilla County.

3.1.2.2 *Nolin Hills Property Tax Comparison*

The following assessment compares the tax benefits of a 260-MW solar facility in Umatilla County under three different property tax scenarios: a base case with-Project scenario, which assumes no tax abatement, and two potential SIP scenarios (low and high). Estimates are also provided for a without-Project scenario, which assumes that the solar facility is not developed. These are estimates for the purposes of comparison only. The assessment is based on the following assumptions:

- The Project has an initial assessed value of \$260 million based on an estimated installed cost of \$1 million per MW.
- Estimates are for a 25-year operating life. Assessed values for the with-Project scenarios are assumed to depreciate over this period, with the Project depreciating to 20 percent of its original value by Year 25. Assessed values for the without-Project scenario are assumed to increase at a rate of 3 percent per year.¹²
- The Project is located in Umatilla County Tax Code Areas 1627 and 504. Tax estimates are based on the 2021-2022 millage rates for the applicable tax code areas.¹³
- Tax revenues for the with-Project scenarios are estimated using a weighted mill rate based on the share of total acres in each tax code area.¹⁴ For the without-Project scenario, tax revenue estimates are based on the current assessed values and mill rates by tax code area.
- The SIP assessment assumes the taxable portion of the project is \$25 million and increases 3 percent per year until the abatement ends after 15 years.
- Two SIP scenarios are assessed to capture the range of potential impacts:
 - The low SIP scenario assumes project payments are equal to property taxes payable on the taxable portion of the assessed value and required community service fee payments.

¹² Statewide Measure 50, passed in 1997, limits the annual growth in assessed value to 3 percent of the existing value.

¹³ Tax Code Area 1627 includes 12 taxing districts with a combined levy or millage rate of 0.0126525 for the 2021-2022 tax year. Tax Code Area 504 includes 14 taxing districts. The combined levy or millage rate for these districts was 0.0139008 for 2021-2022 (Umatilla County 2021a). Millage rates are expressed as a dollar amount per \$1,000 assessed value. A rate of 1 mill, for example, imposes tax at a rate of \$1 per \$1,000 of assessed property value.

¹⁴ The majority of the 1,896-acre solar siting area (1,683 acres; 89 percent) is located in Tax Code Area 1627, with the remaining (213 acres; 11 percent) located in Tax Code Area 504. These relative shares were used to develop a weighted mill rate for the purposes of analysis for the with-Project scenarios.

- The high SIP scenario assumes a negotiated minimum payment of \$7,000 per MW that includes property tax, community service fee payments, and additional payments.

The results of this assessment are summarized in Table K-5 and Figure K-11. Total estimated payments to Umatilla County under the two SIP tax abatement scenarios would be approximately \$25.7 million (low SIP) to \$39.0 million (high SIP) over the 25-year operating life of the Project. These estimates assume that the Project negotiates a SIP agreement with Umatilla County. If a SIP is not negotiated with the county, total estimated payments to Umatilla County under the base case with-Project scenario would be substantially higher, approximately \$49.9 million over the 25-year life of the project. Under the without-Project scenario, the four tax parcels that encompass the solar siting area would generate an estimated \$0.35 million in property tax revenues over the next 25 years (Table K-5, Figure K-11).

Table K-4. Estimated Tax Benefits by Scenario (in millions of dollars)

Years	Without Project	With Project		
		Base Case	Low SIP	High SIP
1 to 5	0.05	15.5	5.2	9.1
6 to 10	0.06	12.8	4.7	9.1
11 to 15	0.07	9.9	4.2	9.1
16 to 20	0.08	7.2	7.2	7.2
20 to 25	0.09	4.4	4.4	4.4
Total	0.35	49.9	25.7	38.9

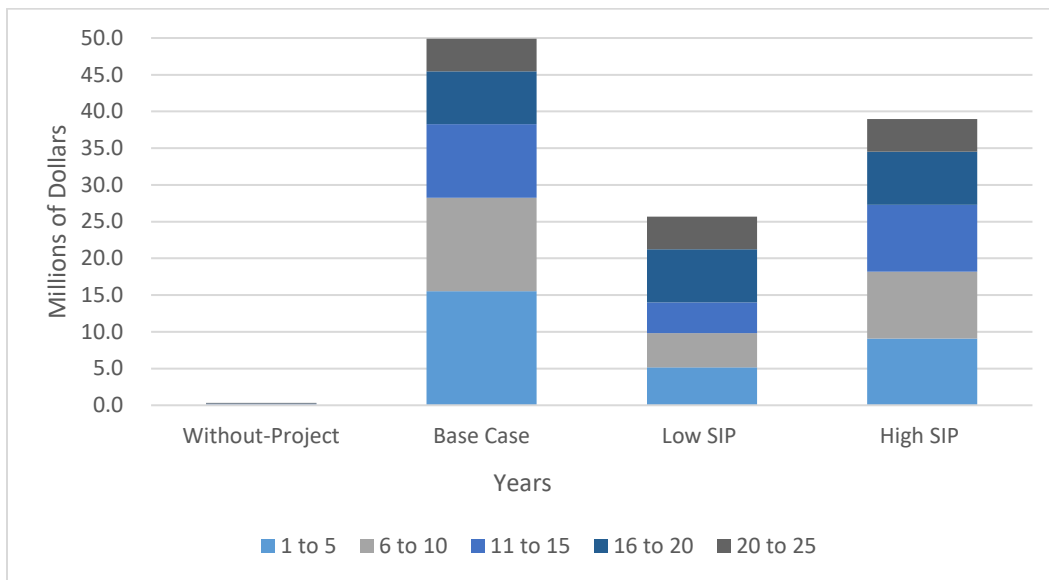


Figure K-11. Estimated Tax Benefits by Scenario (in millions of dollars)

Estimates are presented for two SIP scenarios to provide a range of potential tax payments that could occur under a SIP agreement. This range represents the uncertainty surrounding the amount of additional payments, if any, that would be negotiated with Umatilla County. The low SIP scenario assumes that payments would be equal to property taxes on the taxable portion of the assessed value and the required community service fee payments, with no additional payments. The high SIP scenario assumes a minimum negotiated payment of \$7,000 per MW. This upper threshold is based on the Fee in Lieu of Property Taxes for solar projects program, which, as discussed above, allows solar projects to be exempt from property taxes for up to 20 years contingent on an annual payment of \$5,500 to \$7,000 per MW (Business Oregon 2021c; ODOE 2021).

Property tax paid under all three with-Project scenarios (base case and low and high SIP) would represent a significant economic benefit to Umatilla County when compared to the without-Project scenario, as shown in Table K-5 and Figure K-11. The combined 2021-2022 tax due for the four parcels that encompass the solar project site is \$9,472, with almost half (49 percent) of this total due to improvements on one of the parcels (Umatilla County 2021b). These improvements, which include a home and farm buildings, are located outside the solar siting area and would not be affected by the Project. The estimated total property tax for the without-Project scenario (\$0.35 million) includes the value of these improvements.

3.1.2.3 Distribution of Estimated Tax Revenues

The Project would generate significant revenues under all three evaluated scenarios, but total revenues could be distributed differently under a SIP agreement relative to the base case and without-Project scenarios. In the base case and without-Project scenarios, payments would be made to the taxing districts that comprise Tax Code Areas 1627 and 504 in accordance with their established levies (which combined make up the millage rate for each area). This would also be the case for the payments on the taxable portion of the assessed value under a SIP agreement. In contrast, community service fee payments and any negotiated amounts would be distributed based on agreements between the county and local taxing districts.

The following discussion assumes that estimated tax revenues that would be generated under all three with-Project scenarios would be generally distributed in accordance with the established levies for Tax Code Areas 1627 and 504. The taxing districts that make up each tax code area may be grouped into three broad categories: education, government, and non-limited (Umatilla County 2021a).

Payments to the taxing districts that make up each tax code area would provide revenue for education and local government, as well as local bonds. The primary education recipients of Project-related property tax revenues would be local school districts, primarily the Pendleton School District and also the Echo School District, as well as the Intermountain Education Service District and Blue Mountain Community College (BMCC).¹⁵ A recent news report suggests that BMCC

¹⁵ Oregon uses a formula to ensure financial equity among school districts, with each school district receiving an allocation per student in combined state and local funds. This distribution formula requires that any increase in property tax revenues be offset by a decrease in state funding (McNamara n.d.).

has experienced reductions in enrollment over the past decade and presently faces a budget crunch (Sierra 2021). Property tax revenues from the Project would provide a small but stable source of additional income to BMCC in the future. BMCC offers a variety of associate degree and certificate options for agricultural business, agricultural production (general, crops, or livestock), precision irrigated agriculture, farm management, and veterinary assistance (BMCC 2021).

The Umatilla County General Fund would receive the largest share of the increased government revenues generated by the Project. Activities that are financed by the general fund include law enforcement, public health, land use planning, assessment and taxation, juvenile services, and general administration. Property tax revenues, including payments in lieu of taxes, made up \$18.7 million or approximately 15 percent of total budgeted general fund resources for Fiscal Year 2021-2022 (Umatilla County 2021c). The estimated revenues paid to the general fund under all three with-Project scenarios would make a substantial contribution to the general fund and related activities.

Other government units that would receive Project-related property tax revenues include the Echo Fire Department, which provides wildland and structural firefighting services, emergency medical care, and first response to motor vehicle crashes within its jurisdiction. The Echo Fire Department covers an area of about 490 square miles that includes agricultural land uses, CRP land, as well as grass and sagebrush (Echo Fire Department 2021). Increased funding for the Echo Fire Department could indirectly benefit agricultural activities through the provision of additional funds for wildland firefighting. Indeed, as Oregon continues to see an increase in the frequency and severity of wildfires, the value of increased funding to the Echo Fire Department for the protection of agricultural land can be seen as an important benefit to the agricultural sector.

In addition, the Umatilla County Special Library District; the County Radio District, which provides voice and data communication services for first responders; and the Port of Umatilla, which supports grain cargo transport and trade for the agricultural sector (Umatilla Morrow Radio & Data District 2021, Umatilla County 2021a) would receive Project-related revenue. As noted above, Project-related revenues would represent an important new source of funds that would otherwise not be available to these government units.

3.1.2.4 Conclusion

The analysis above demonstrates that the Project's solar facility will contribute tax dollars to Umatilla County and provide a local economic benefit, which includes support for the sustainable continuation of the local agricultural economy. The local economic benefit under all three of the with-Project scenarios (base case, low SIP, and high SIP) would be significant, as presented above. Estimated tax revenues over the 25-year operating life of the Project would range from approximately \$25.7 million (low SIP) to \$49.9 million (base case), with an estimated \$39.0 million for the high SIP scenario (Table K-5, Figure K-11). In all cases, these estimates are significantly higher than the estimated property tax revenues (\$0.35 million) that would be generated over the same period if there was not a solar facility.

3.1.3 Locational Dependency

Lack of Alternatives that Have Less Impact to Agriculture. The solar siting area is the only contiguous area (i.e., consolidated without large non-buildable gaps) of sufficient size for a 260-MW solar facility (i.e., at least 1,896 acres as proposed) with a grade of less than 10 percent that is present on the subject tracts. Therefore, there are no other feasible sites located on the subject tracts. The subject tracts include Tracts 3, 8, 11, and 14 as outlined on Figure K-6.1.

Considering the full Project Site Boundary, the solar siting area is one of three contiguous areas at least 1,896 acres in size with less than 10 percent slope. However, the other two contiguous areas of sufficient size and slope in the Site Boundary are also located on arable soils and include existing dryland agricultural operations, and therefore do not provide alternative sites that avoid arable land or provide less impact to agriculture.

Therefore, the Applicant selected the area best suited to allow continuation of existing commercial farm use through the most efficient use of land and least number of acres impacted within the Site Boundary. This is achieved by co-locating the solar siting area with the northern Project substation, thus eliminating the need for additional collection and transmission lines for a site farther away, resulting in fewer impacts to farmland and potential division of farm fields. In contrast, the alternative solar siting area at the southern end of the Site Boundary would require more transmission infrastructure while not providing any beneficial avoidance of Goal 3 lands. The southern site would also result in potentially greater high-quality habitat (Category 1; see Figure P-5) impacts within the Site Boundary in order to connect to the northern Project substation. The other alternative location, located in the western portion of the Site Boundary, includes lands that are classified as high-value farmland based on ORS 195.300(10)(C) due to place of use water rights. While the relevant water right was canceled in November 2018¹⁶, the ORS definition is based on water rights in place as of June 28, 2007 (“*Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is: (A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;*”). Therefore, the Applicant identified this location as having a greater extent of high-value farmland than the proposed solar siting area, where no existing or canceled water rights are present. As a result, this location does not provide a comparative Goal 3 benefit to the proposed solar siting area.

Proximity to Transportation Network. The solar siting area is located directly off of an existing road providing access to the local and regional transportation network for transportation of equipment, components, and construction and operations workers. Specifically, the solar siting area is located directly off of Speare Canyon Road/Coombs Canyon Road (County Road 1350) and additional existing unnamed local roadways cross the solar siting area. County Road 1350 directly connects to US-395, which has been identified by the Applicant as a primary transportation route for the Project. The location of the solar siting area therefore eliminates the need to construct major

¹⁶ The water right, permit number G-15287, was canceled on November 7, 2018. The permit allowed for two wells for irrigation of 1,199 acres between March 1 through October 31 with a maximum water draw cumulative total between the two wells of 15.0 cubic feet per second.

new access routes to connect with the regional transportation network, as well as minimizes the need for new access roads within the solar siting area. As a result of this proximity to existing roadways and the larger transportation network, the ability for materials and workers to reach the solar siting area is more efficient, less costly, and less impactful to the environment than another site that lacks similar existing access and would require substantially greater roadway construction.

Avoidance of Irrigated Agriculture. The solar siting area avoids any impacts to irrigated agricultural land or irrigation infrastructure. The closest irrigated farmland to the solar siting area is approximately 0.9 mile to the north, near the Umatilla River. This is a conservative estimate based on the presence of irrigation water rights and cultivated land, but no central irrigation pivot. The closest irrigation pivots are just over a mile from the solar siting area, with the bulk of similar irrigated central-pivot farmland over 3.5 miles from the solar siting area to the north/northwest. Additional clusters of irrigated farmland are over 8 miles to the east toward Pendleton and over 10 miles to the southeast near Pilot Rock.

As noted earlier, there are no other sites within either the underlying subject tracts for the solar siting area or the full Site Boundary that would both be feasible for the solar facility and impact less arable land. Outside of the Site Boundary, other potentially solar-suitable sites near wind-suitable sites would also have similar agricultural impacts to the proposed solar siting area. Where large, flat areas are interspersed with hill ridges in central-west Umatilla County, those flat areas are also arable and often in active agricultural use and subject to Goal 3 requirements. The southern portion of Umatilla County has more steep slopes and/or denser tree coverage, which could be potentially viable for wind energy but not solar generation facilities, and the northern section of Umatilla County is devoted to a larger degree to irrigated agriculture and urbanized uses, which would lead to greater impacts from a wind and solar energy facility. Thus, the proposed solar siting area is best suited to avoid impacts to irrigated agriculture, keep impacts to arable land the same or less than any reasonably comparable site in central-west Umatilla County, and simultaneously support integration with the proposed wind facility for an efficient use of land that provides a valuable source of clean renewable energy.

3.1.4 Minimal Impacts to Other Environmental Resources

The solar siting area was selected, in part, to avoid sensitive environmental features, including Washington ground squirrel habitat, Federal Emergency Management Agency 100-year floodplains, U.S. Fish and Wildlife Service–designated critical habitat, ODFW–designated big game winter ranges, and any National Hydrography Dataset or National Wetland Inventory–mapped wetlands or waters (Figure P-5). This area, encompassing the full 1,896-acre Goal 3 exception request, is the relevant location for minimizing impacts to other environmental resources as a supporting reason for the Goal 3 exception.

In the October 6, 2021 memorandum to the Applicant, ODOE noted that the Applicant’s Goal 3 exception request would also apply to proposed access roads and transmission line routes that intersect with CRP fields, and therefore ODOE suggested the Applicant provide evidence of the

absence of sensitive environmental resources at not only the solar siting area but also at the transmission line routes and other transportation routes.

The Applicant respectfully disagrees that the Goal 3 exception request would apply to the proposed access roads located outside the solar siting area or to the proposed transmission line route. Access roads outside the solar siting area are either associated with the wind facility or with one of the transmission line routes. The wind facility and both the UEC Cottonwood and Bonneville Power Administration Stanfield transmission line options do not fall under the definition of “photovoltaic solar power generation facility” per OAR 660-033-0130(38)(f) but rather fall under their own land use definitions of “wind power generation facility” (subject to OAR 660-033-0130(37)) and “Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300” (subject to OAR 660-033-0130(16)). The Project’s need for a Goal 3 exception is due to the acreage standards under OAR 660-033-0130(38), which is specific to a “photovoltaic solar power generation facility.” In contrast, the land use criteria under OAR 660-033-0130(37) address the requirements for siting a wind power generating facility on Agricultural Lands and OAR 660-033-0130(16) addresses the requirements for siting “utility facilities necessary for public service, including associated transmission lines” on Agricultural Lands. The Project’s wind power generation facility meets the standards under OAR 660-033-0130(37), and the Project’s two proposed transmission line routes meet the standards under ORS 215.274 and ORS 215.275, and OAR 660-033-0130(16) as evidenced in Section 4.3 of Exhibit K. Therefore, a Goal 3 exception is not required for the wind power generating facility or for the transmission lines or for the access roads associated with each use. Rather, the Goal 3 exception area is appropriately identified as the 1,896-acre solar siting area, and its avoidance of sensitive environmental features and thus minimal impacts to other environmental resources should be considered a supporting reason to grant a Goal 3 exception.

In addition to the types of resources noted above that would be avoided, the solar siting area avoids all designated Goal 5 resources. Goal 5 resources are those protected under the county’s comprehensive plan or implementing ordinances. The Umatilla County Comprehensive Plan (Umatilla County 2017) addresses the 14 statewide planning goals adopted by the State of Oregon. Umatilla County conducted a detailed Goal 5 resource analysis in an accompanying Comprehensive Plan Technical Report, last amended in 1984 (Umatilla County 1984). In Section D of the Technical Report, Umatilla County provides analysis and reference maps for a wide range of Goal 5 resources. None of the identified Goal 5 resources overlap the solar siting area or occur on adjacent lands. No overlay zoning districts related to Goal 5 resources are present in the solar siting area. Therefore, no Goal 5 resources protected by Umatilla County’s Comprehensive Plan are within the solar siting area. This further supports a “reasons” exception is appropriate for the proposed Project.

3.2 Evidence that Environmental, Socioeconomic, and Energy Consequences Favor the Exception

ORS 469.504(2)(c)(B); OAR 345-022-0030(4)(c)(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility;

When considering the environmental, economic, social, and energy consequences, the Council may take into consideration factors that are also considered under several of the Council's review standards already.

Environmental. The Project's environmental consequences are discussed primarily in Exhibit I (Soils), Exhibit J (Wetlands), Exhibit L (Protected Areas), Exhibit P (Fish and Wildlife), Exhibit Q (Threatened and Endangered Species), Exhibit R (Scenic Resources), and Exhibit S (Cultural Resources). These exhibits demonstrate that the Project will not cause significant adverse environmental consequences. Indeed, by and large, the Project has been designed to and will avoid impacts to such resources altogether. The Applicant will mitigate for any unforeseen impacts to wildlife habitat based on habitat categorization, in accordance with ODFW policy (see Exhibit P). The Applicant does not anticipate any significant adverse impacts to soils, wetlands, protected areas, water resources, threatened and endangered species, scenic and aesthetic resources, and historic, cultural, and archaeological resources from the Project. The Project will comply with all anticipated Site Certificate conditions for these resources.

The region has warmed nearly 2 degrees Fahrenheit since 1900 because of increased greenhouse gas emissions (Dalton et al. 2017). This warming includes warmer waters that affect both river and coastal ecosystems, threatening salmon runs and other important marine and freshwater species. Additionally, in eastern Oregon, large mountain areas have been hit by mountain pine beetle infestations, wildfires, or both, causing widespread shifts in forest ecosystems (Dalton et al. 2017). A mission of Oregon's Climate Action Plan (Executive Order 20-04) is to achieve a reduction in greenhouse gas emissions levels to at least 45 percent below 1990 emissions levels by 2035 at least 80 percent below 1990 emissions levels by 2050. One of the measures identified to accomplish this is through supporting clean energy resources. Therefore, the solar energy generation facility may contribute to the reduction of greenhouse gas emissions, which thereby may result in a beneficial environmental impact.

Social. The Project's social consequences will not be adverse. When considering the social consequences, the Council takes into consideration factors such as access and impact to resources of importance to the public such as protected areas, recreation, cultural resources, and scenic areas. The Council also takes into consideration impacts to public and community services. Exhibit L demonstrates that the Project will not adversely impact protected areas within the analysis area and, similarly, Exhibits R, S, and T demonstrate the same for scenic resources, cultural resources, and recreation, respectively. Exhibit U demonstrates that the solar array will not result in adverse

impacts on public or community services such as health care, education, housing, water supply, waste disposal, transportation, or fire and safety.

Economic. When considering the economic consequences, the Council takes into consideration factors such as (1) any increased burden on public services, (2) benefits to the rural tax base, (3) job creation, and (4) revenue for area landowners. Exhibit U contains a discussion of the potential impacts on public services, including fire, safety, and transportation. It also provides information on job creation during construction and operation. As discussed above, the Project will create jobs and contribute income to Umatilla County. These benefits should be measured against the relatively small amount of agricultural activity that will be displaced by the solar energy facility. The Project will supplement farmers' income with lease payments and without significantly reducing the land base available for farming practices. As noted in Section 7.1 of Exhibit K, lease payments would provide a net benefit in revenue compared to the value of dryland wheat cultivation (see Attachment K-1). Exhibit W discusses retirement and restoration of the Project and demonstrates that no burden will be placed on the area landowners or the County because the Applicant is obligated to retire and restore the site and will have a financial assurance in place to guarantee such work.

Energy Consequences. The Project would provide a reliable renewable source of electricity consistent with state and local goals with no fuel cost and no associated emissions for at least 30 years. As discussed throughout this exhibit, the solar energy facility would not adversely affect any farming operations in the general area. There are no significant adverse economic consequences of constructing and operating the Project, as proposed.

3.3 Compatibility with Adjacent Land Uses

ORAR 345-022-0030(4)(c)(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

Land uses adjacent to the solar facility are primarily devoted to agricultural uses, predominantly for the grazing of livestock and some additional dryland wheat cultivation as discussed above, and related accessory uses. The Project will be compatible with adjacent land uses for the following reasons:

- While some increase in traffic is anticipated during construction, Exhibit U demonstrates that the temporary increase in the level of traffic will not significantly impact level of service on local roads. During operation, traffic generated from the Project will generally be similar to traffic generated by adjacent land uses. A road use agreement will be negotiated with the County prior to construction. A component of the road use agreement will be a traffic management plan. The traffic management plan will address such issues as flagging, signage, and traffic flow around work sites on public roads; timing of oversize/overweight truck loads to avoid impacts. Therefore, both operational and construction traffic will not interfere with harvest time activities such as tractor movement between fields or trucks delivering agricultural products to market.

- The Applicant will record in the real property records of Umatilla County a “Covenant Not to Sue” against its Project leasehold interests with regard to generally accepted farming practices on adjacent farmland.
- The Project will not limit or impact current or future farm activities on the surrounding land and will not diminish the opportunity for neighboring parcels to expand, purchase, or lease any vacant land available for agricultural uses.
 - As noted earlier, the solar siting area is surrounded on 95.5 percent of its perimeter by landowners participating in the Project (Figure K-10). The participating landowners have no concern regarding their ability to continue agricultural activities outside of the solar siting area.
 - As detailed in Section 7.1 of Exhibit K, for both participating and non-participating landowners, existing farming practices would continue without any significant changes or additional costs of farming as a result of the construction and operation of the solar facility.
 - The landowner where the solar siting area is located, the Cunningham Sheep Company/Pendleton Ranches, plans to continue agricultural operations on their remaining lands (over 73,000 acres, or approximately 97.5 percent of their holdings), with no loss of agricultural employment or reduction in spending on local agricultural suppliers and service providers; therefore, no indirect adverse impact on the local agricultural economy and broader surrounding lands’ farm practices or costs of those practices.
- The Applicant will implement a weed control plan during construction and operation that will reduce the risk of weed infestation in cultivated land and the associated cost to the farmer for weed control (see Attachment P-4 to Exhibit P for weed prevention and control measures).
- The Project will not affect the application of pesticides or fertilizers using ground-based methods. Aerial spraying may be utilized for application of pesticides or fertilizers to crops within the Analysis Area.
- To avoid or reduce adverse impacts to soil quality, the Applicant will implement dust control and erosion-control measures during construction and operation of the Project (see Exhibit I).
- The Project will not use any water that would otherwise be used for irrigation (see Exhibit O).

The measures above are intended to avoid or minimize the impacts of the Project on farming operations in the Analysis Area, and to mitigate for necessary impacts. The Applicant will consult with area landowners during construction and operation of the Project to determine further measures to reduce or avoid any adverse impacts to farm practices on surrounding lands and to avoid any increase in farming costs. Therefore, with the implementation of control measures, the Project will be compatible with adjacent land uses.

4.0 Conclusion

For the reasons set forth above, the Project's justification for an exception to Statewide Planning Goal 3 is demonstrated under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). An exception is warranted to allow a locationally dependent facility that will fulfill important state and county goals, by providing renewable energy while minimizing impacts on local farming practices.

5.0 References

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Figures (Maps)

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Nolin Hills Wind Power Project

Figure C-5 Solar Siting Area Detail

UMATILLA COUNTY, OREGON

-  Proposed Site Boundary
-  Micrositing Corridor
-  Proposed BPA Stanfield Transmission Line Route, 230-kV
-  Proposed UEC Transmission Line Route, 230-kV
-  O&M Facility
-  Proposed Substation
-  Proposed Laydown Area
-  Proposed Project Substation Connector, 230-kV
-  Solar Siting Area Fenceline
-  Solar Array
-  Solar Access Road
-  DC BESS Inverter Block
-  BESS Block
-  Secondary Road
-  Local Road
-  Stream/River



Data Sources

Reference Map

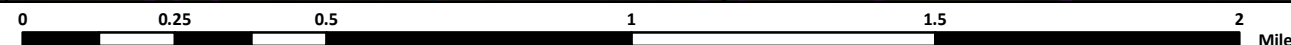
Capital Power-Project Infrastructure;
USDA-Aerial Imagery; ESRI-Roads



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1:20,000 WGS 1984 UTM Zone 11N












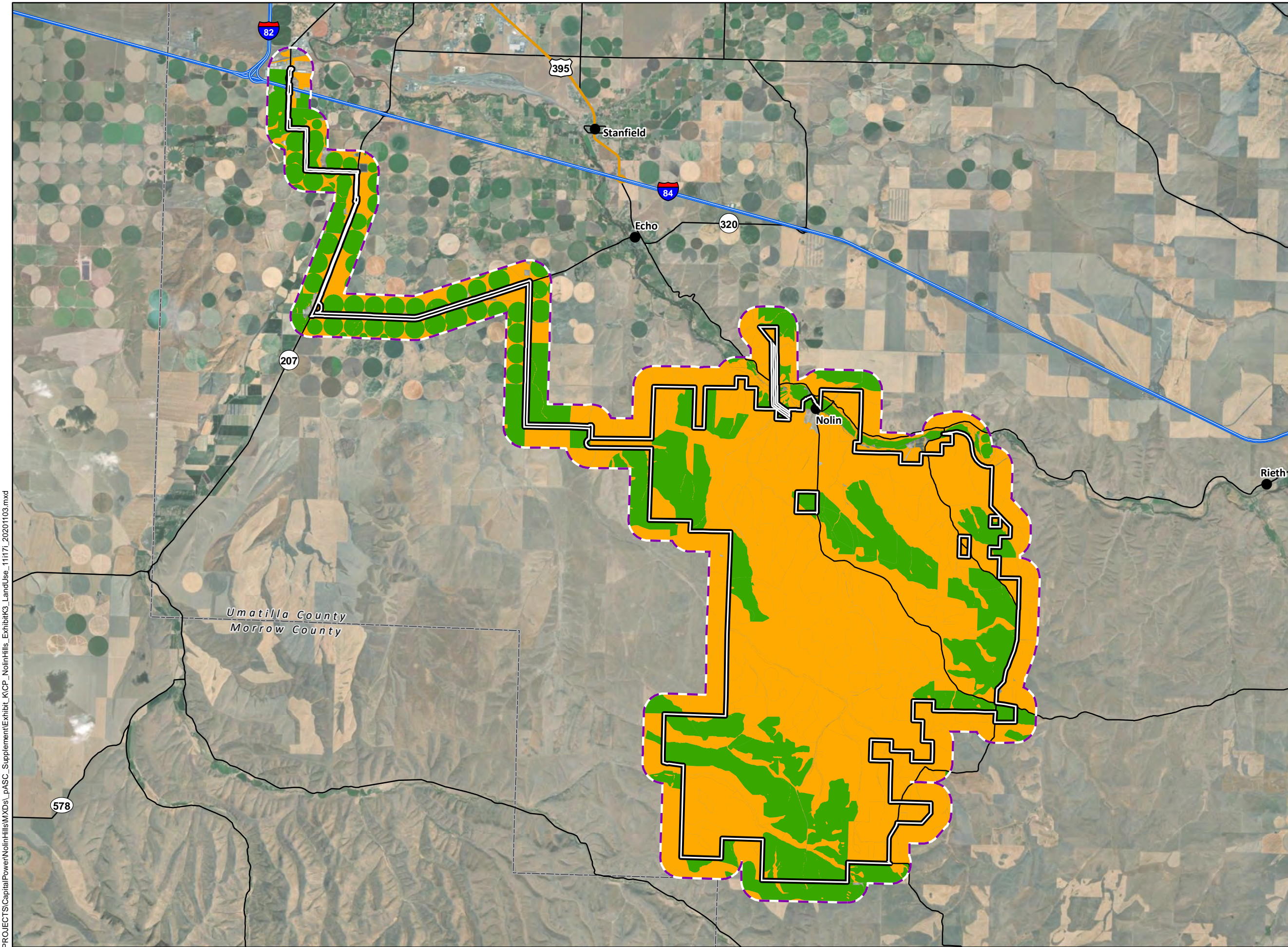
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Nolin Hills Wind Power Project

Figure K-3
Land Use

UMATILLA COUNTY, OREGON

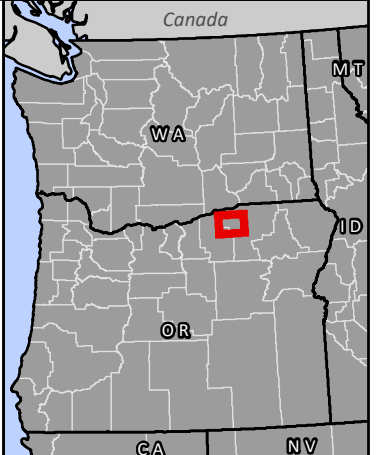
-  Proposed Site Boundary
-  Analysis Area (0.5-mile Buffer)
-  City/Town
-  Interstate Highway
-  Secondary Highway
-  Secondary Road
-  County Boundary
- Existing Land Use
 -  Cultivated Land
 -  Non-Cultivated Land



Data Sources

Capital Power-Project Infrastructure;
Existing Land Use (Habitat Survey);
ESRI-Roads; NAIP-Aerial Basemap
Enterprise-Cities, County Boundaries;

Reference Map



1:145,000 WGS 1984 UTM Zone 11N



















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Nolin Hills Wind Power Project

Figure K-4 NRCS Soil Classifications

UMATILLA COUNTY, OREGON

-  Proposed Site Boundary
-  Analysis Area (0.5-mile Buffer)
-  Tract Boundary*
-  City/Town
-  Interstate Highway
-  Secondary Highway
-  Secondary Road
-  County Boundary
- NRCS Soil Classifications**
-  No Value
-  1
-  2
-  3
-  4
-  6
-  7
-  8

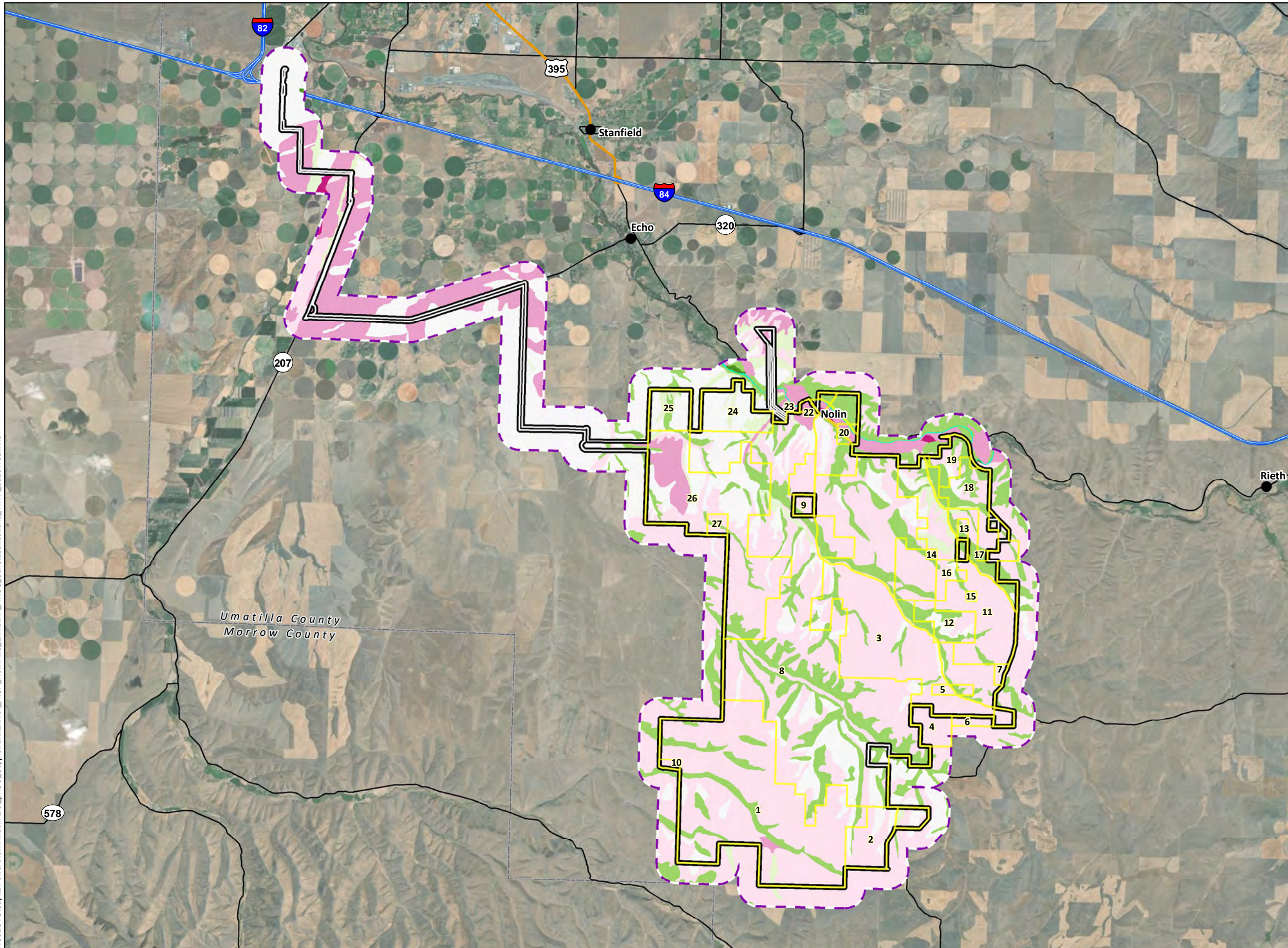
*Each Tract Numbered is Labeled 1 through 25



Data Sources

Reference Map

Capital Power-Project Infrastructure;
ESRI-Roads, Topographic Basemap;
Enterprise-Cities, County Boundaries;



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Nolin Hills Wind Power Project

Figure K-6.1
High-Value Farmland
Energy Generation
Facility Site Boundary

UMATILLA COUNTY, OREGON

- Proposed Site Boundary
 - Analysis Area (0.5-mile Buffer)
 - Micrositing Corridor
 - Tract Boundary¹
 - Solar Siting Area
 - Umatilla County Road ROW and UEC ROW²
 - City/Town
 - Interstate Highway
 - Secondary Road
 - Local Road
 - County Boundary
- Transmission Line Status, kV Class**
- In Service, 230-345
- High Value Farmland (HVF)**
- HVF per Classes I and II Soils
 - HVF per Place of Use Water Rights and Irrigation Districts
 - HVF per Columbia Valley Viticulture Area

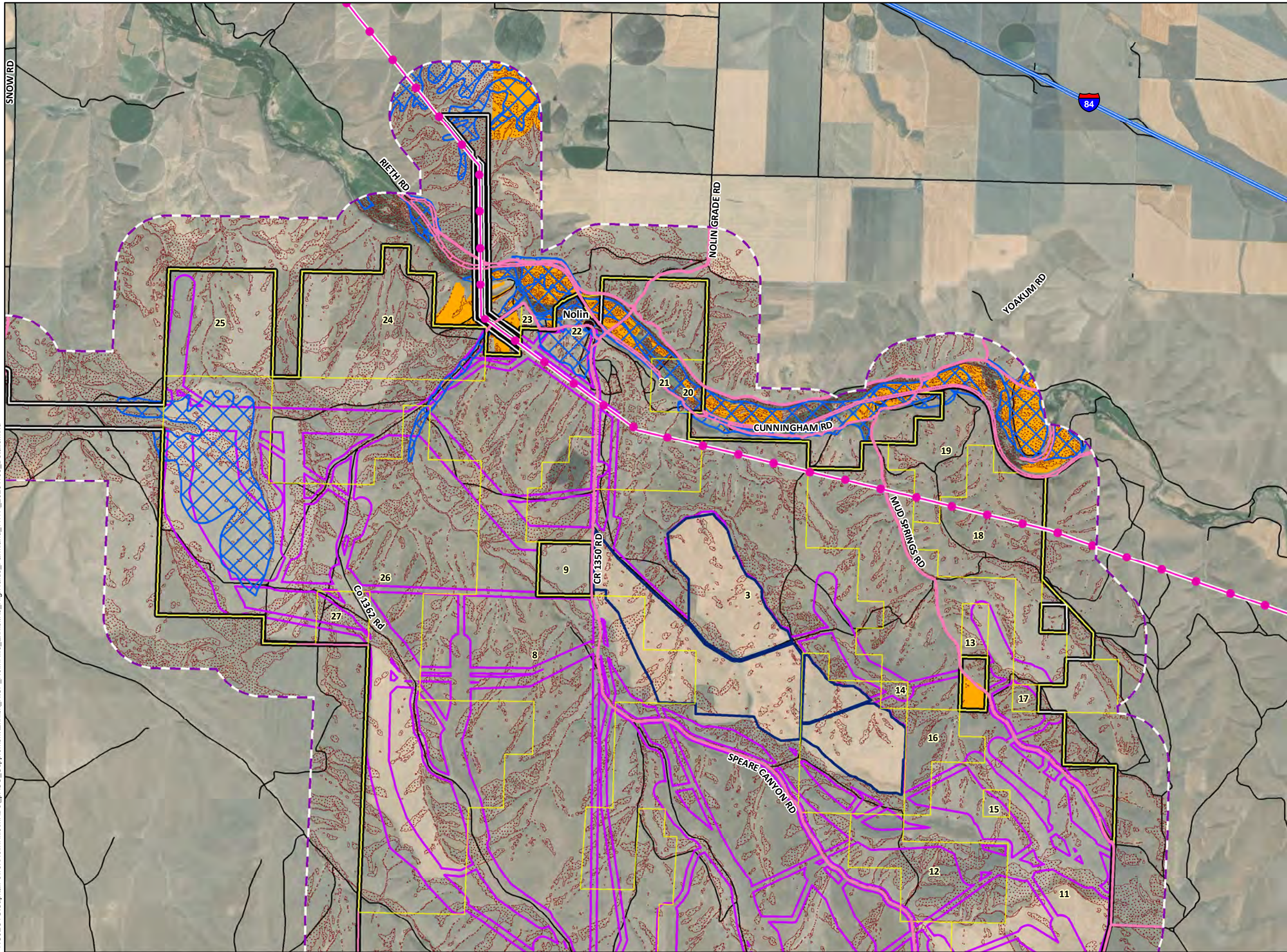
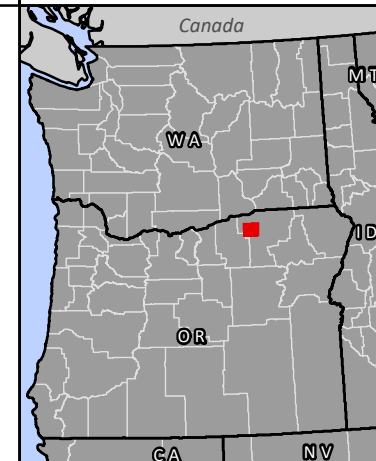
¹Each Tract Numbered is Labeled 1 through 25
²Not based on survey data



Data Sources

Reference Map

Capital Power-Project Infrastructure;
ESRI-Roads, Topographic Basemap;
Enterprise-Cities, County Boundaries;
















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Nolin Hills Wind Power Project

Figure K-8.1
Arable and Non-arable Land
Energy Generation
Facility Site Boundary

UMATILLA COUNTY, OREGON

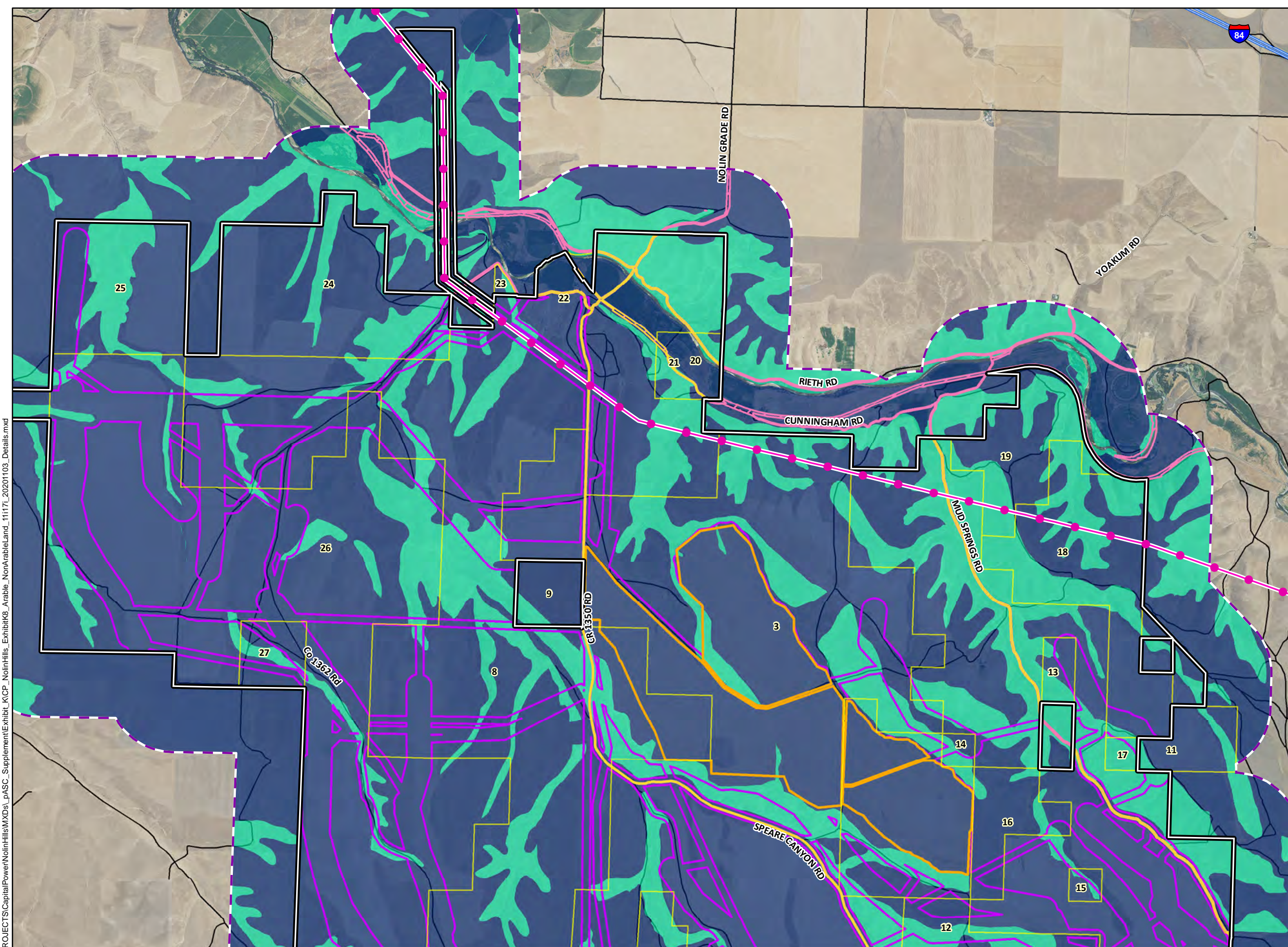
-  Proposed Site Boundary
 -  Analysis Area (0.5-mile Buffer)
 -  Micrositing Corridor
 -  Solar Siting Area
 -  Tract Boundary¹
 -  Umatilla County Road ROW and UEC ROW²
 -  Non-Arable Land
 -  Arable Land
 -  Interstate Highway
 -  Secondary Road
 -  Local Road
 -  County Boundary
- Transmission Line Status, kV Class**
-  In Service, 230-345

¹Each Tract Numbered is Labeled 1 through 25
²Not based on survey data



Data Sources Reference Map

Capital Power-Project Infrastructure;
ESRI-Roads; NAIP-Aerial Basemap;
Enterprise-Cities, County Boundaries;



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Nolin Hills Wind Power Project

Figure K-10
Solar Siting Area
Surrounding Lands

UMATILLA COUNTY, OREGON

-  Proposed Site Boundary
-  Micrositing Corridor
-  Solar Siting Area Fenceline
-  Tax Lot Boundary
-  Non-participating Land Owner
-  Participating Land Owner*
-  Cultivated Land
-  Public Road

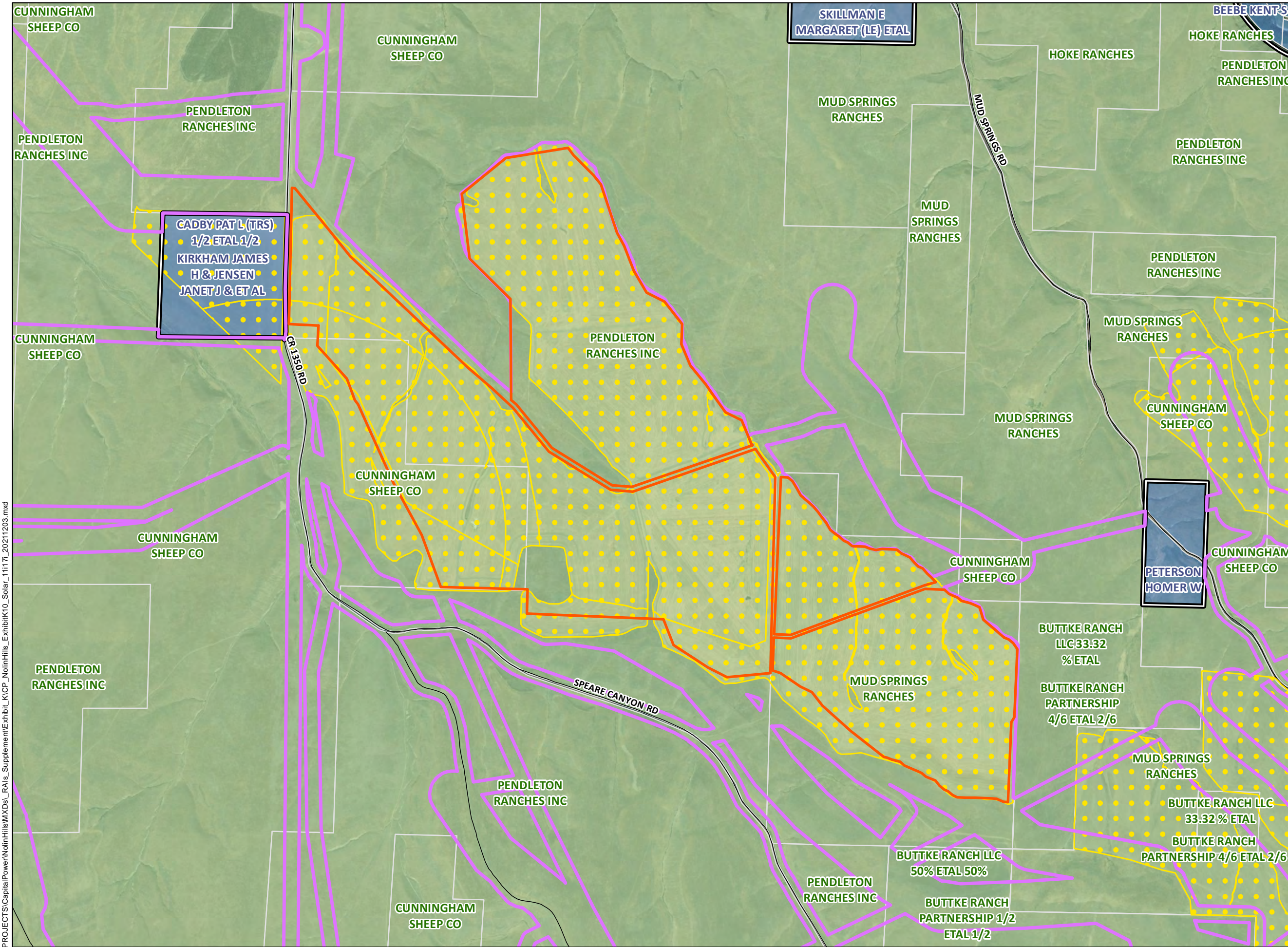
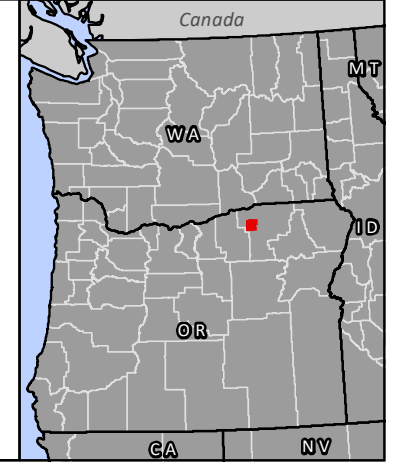
* Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches are all controlled by a single landowner family



Data Sources

Capital Power-Project Infrastructure;
USDA-Aerial Imagery; ESRI-Roads

Reference Map



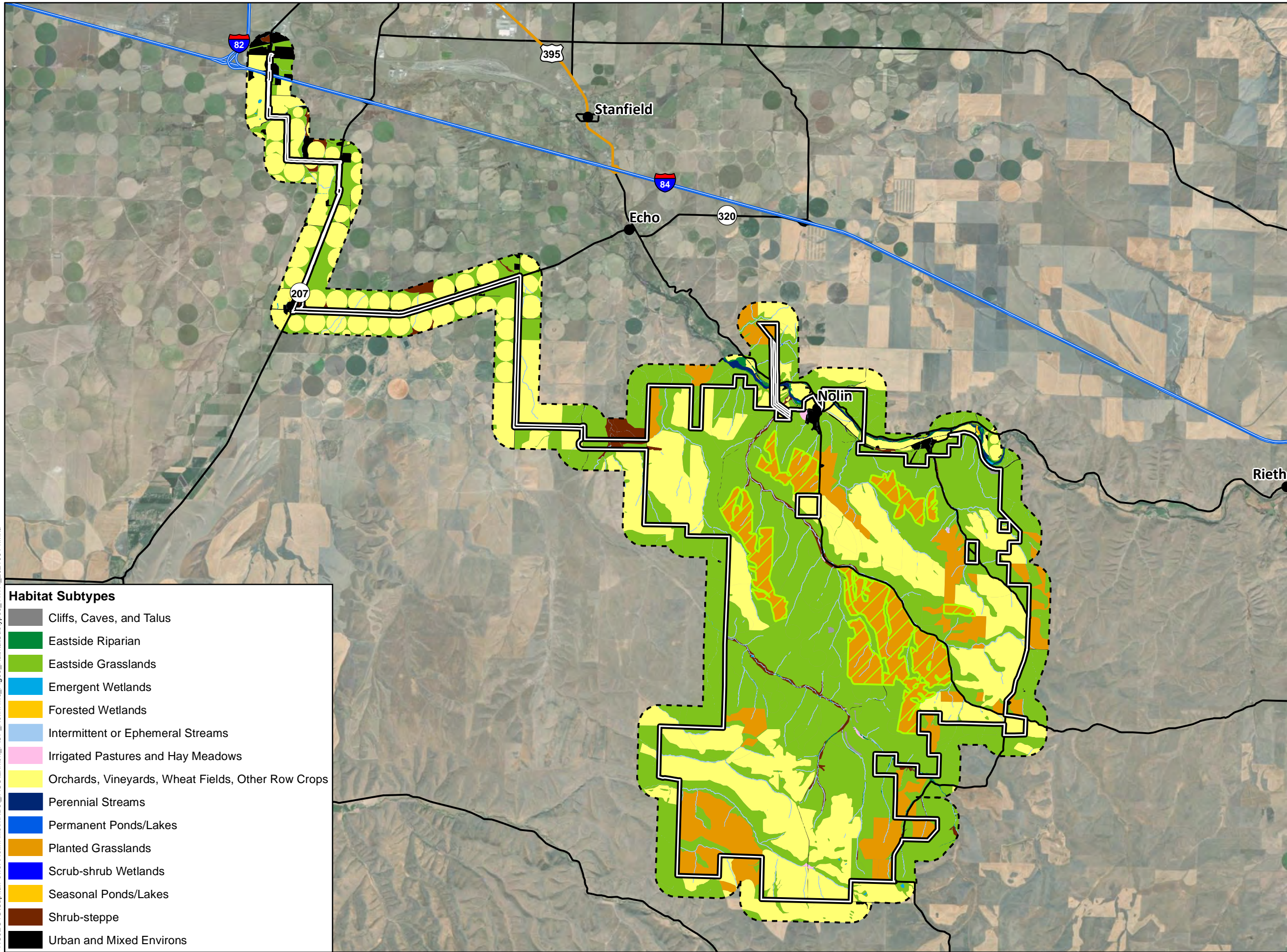
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Nolin Hills Wind Power Project

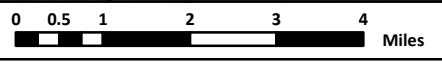
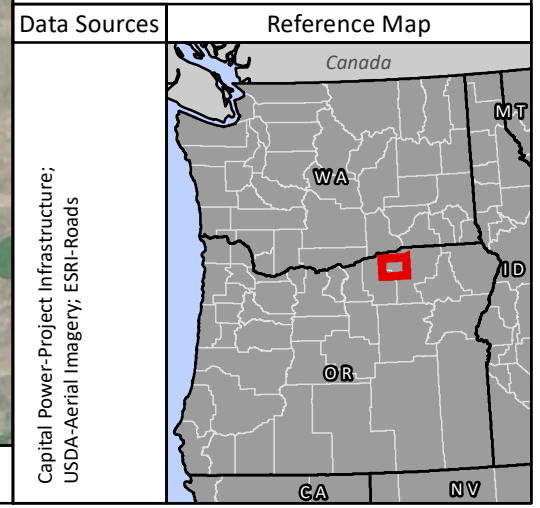
Figure P-5
Habitat Subtypes
within the Analysis Area

UMATILLA COUNTY, OREGON

- Proposed Site Boundary
- Analysis Area (0.5-mile Buffer)
- City/Town
- Interstate Highway
- Secondary Highway
- Secondary Road
- Fallow Wheat Field/Recently Enrolled Conservation Reserve Program (CRP) Lands



- ### Habitat Subtypes
- Cliffs, Caves, and Talus
 - Eastside Riparian
 - Eastside Grasslands
 - Emergent Wetlands
 - Forested Wetlands
 - Intermittent or Ephemeral Streams
 - Irrigated Pastures and Hay Meadows
 - Orchards, Vineyards, Wheat Fields, Other Row Crops
 - Perennial Streams
 - Permanent Ponds/Lakes
 - Planted Grasslands
 - Scrub-shrub Wetlands
 - Seasonal Ponds/Lakes
 - Shrub-steppe
 - Urban and Mixed Environs



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Attachment K-1. Landowner Letters to the Oregon Department of Energy

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CUNNINGHAM SHEEP & LAND COMPANY
PENDLETON RANCHES, INC.
MUD SPRINGS RANCHES
HOKE RANCHES



CUNNINGHAM SHEEP COMPANY

303 S.E. 3RD STREET

P.O. BOX 1186

541-276-6391

PENDLETON, OREGON 97801

March 15, 2021

Re: Nollin Hills EFSC Application
ODOE

To Whom it May Concern:

This letter confirms that Cunningham Sheep Company and related companies anticipate annual net revenues per acre from land that will be used for wind or solar development by the project will substantially exceed revenues from the present dry land wheat farming. As land owners, we believe the lease payments from the applicant both for the wind component and the solar component will be a net benefit in revenue compared to the value of dry land wheat cultivation.

If we can provide further information, please let me know.

Thank you.

Sincerely yours,



Steven H. Corey

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Attachment 4.

Letter from Stoel Rives LLP dated May 20, 2022, expressing concern with ODOE's individual vs. holistic analysis of Nolin Hill's reasons for a Goal 3 exception and advising Council regarding unexpected consequences

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www.stoel.com

TIMOTHY L. MCMAHAN
D. 503.294.9517
tim.mcmahan@stoel.com

May 20, 2022

Ms. Marci Grail, Council Chair
Council Members, EFSC

Mr. Todd Cornett, Siting Manager
Oregon Department of Energy
550 Capital Street NE
Salem Oregon, 97310

RE: Nolin Hills Wind Power Project; Statewide Land Use Planning Goal 3

Dear Chair Grail and Council Members:

Thank you for the opportunity to provide additional information to the Council regarding the efforts the Nolin Hills Wind Power Project (Nolin Hills) has made to comply with Statewide Land Use Planning Goal 3 (Goal 3). As you are aware, a Goal 3 exception is not necessary for the wind energy generation portion of the Project. OAR 660-033-0130(37). A Goal 3 "reasons" exception is needed for the solar generation portion of the Project.

Nolin Hills has designed this facility to meet compelling needs to mitigate climate change, by proposing technology that includes both wind and solar energy generation, along with a related and supporting battery energy storage facility, all aimed at a steady, reasonably "firm" clean energy resource that will best serve Oregon's long-term energy needs.

The Nolin Hills team has heard the Council expressing general concerns regarding the sufficiency of Goal 3 analyses for solar PV facilities. We have heard the Council state that applicants need to "do a better job" in justifying Goal 3 exceptions. Nolin Hills accepts the Council's concerns, and we have worked closely with ODOE and the Project landowners to fully describe how this Project meets the requirements for a Goal 3 exception.

We strongly believe that this Project is unique in enabling a valuable "hybrid" clean energy project while also demonstrating a commitment to enhanced long term investment in local jobs and increased agricultural production stemming directly from the implementation of the Facility. Nolin Hills has partnered with a multi-generational Oregon landowner that is committed to sustainable agriculture and to the perpetuation of and investment in the local agricultural economy. We ask the Council to carefully read the Applicant's Goal 3 analysis, ASC Ex. K, 77 – 98, and the supporting letters from the landowners, Attachments K-1.

Mr. Steven H. Corey's letter (Attachment K-1) confirms that the project "will enable us to support and improve our farming and ranching operations in the surrounding area by providing valuable

May 20, 2022

Page 2

lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments.” The landowner is committed to specific efforts to “strengthen the diversity base of our legacy farm.” There will be “no loss of employees,” and to the contrary, the landowner expects to add agricultural jobs to its payroll “based on the lease payments.” See DPO, pp. 113 – 114; 129 – 130. The significant local economic benefits of the Project are documented in Ex. K, pp. 83 – 92, and summarized in the DPO, pp. 115 – 116.

The record reflects the Applicant’s commitment to work with the landowners and the County to ensure that the Project satisfies Goal 3 exception criteria, both through evidence of enhancements to local agriculture and the Project’s commitment to further, substantial investment in the local economy. We are concerned, however, that the DPO establishes a new method of evaluating a Goal 3 Reasons Exception where reasons for Goal 3 exceptions are evaluated individually versus in combination with one another. This is inconsistent with past Goal 3 exception approvals and the “substantial evidence” standard applied by the Oregon Supreme Court in prior EFSC Goal 3 appeals. (See Footnote No. 1 below).

We have reviewed the recent Obsidian Solar order, OAH Case No. 2020-ABC-03504, pp. 93 – 96. (Except attached hereto). The Obsidian order reflects an analysis of all factors supporting a Goal 3 Reasons Exception, including the accompanying ESEE analysis. The Hearings Officer’s order was based on substantial evidence and is consistent with other orders and Council decisions. The Obsidian analysis collectively evaluated all factors together, finding support for the exception.¹ The Obsidian Order (pp. 95 – 96) lists the combination of factors that together support the Goal 3 exception. An excerpt from the Obsidian Solar order is attached with this letter.

In the Nolin Hills DPO, ODOE states that the “reasons” “are evaluated in combination, but are first evaluated individually.” (DPO, p. 111). Our reading of the DPO suggests that the reasons are evaluated individually and generally *not in combination*, with ODOE rejecting substantial evidence that was accepted in the Obsidian case. This includes minimal direct impacts to agriculture, minimal impacts on surrounding lands, the fact that this facility does not impact irrigation water availability, locational suitability and dependency of the solar facility, and the Applicant’s efforts to design the Project to minimize and avoid environmental impacts. Also listed is the promotion of renewable energy policies, the ability to fulfill mitigation responsibilities, and the infusion of significant investments and tax revenues in the local economy. Many such factors are described in detail in the Nolin Hills ASC, Ex. K, pp. 77 - 98. Past practice has accounted for the accumulation of factors and not separately weighing them individually.

¹ In *Friends of Parrot Mountain vs. NW Natural*, 336 Or. 93 (2003), the Supreme Court affirmed EFSC’s Goal 3 findings, stating that the court will “review any challenged factual findings of the council for substantial evidence in the record.” 336 Or at 96. In *Save our Rural Oregon vs. Energy Facility Siting Council*, 339 Or. 353 , 373 (2005), the Court held that substantial evidence in the record supporting Goal 3 findings exists “when the record, viewed as a whole, would permit a reasonable person to make that finding.”

May 20, 2022

Page 3

While it may be ODOE's and the Council's intent to not consider these factors holistically, but instead to weigh them individually, we simply wish to emphasize that this is a change in direction that should be acknowledged. Again, the Nolin Hills project provides compelling and substantial evidence to justify the Goal 3 exception, confirmed by ODOE, based on the legal criteria affirmed by the Oregon Supreme Court. Our concern relates more to how EFSC is signaling a new standard for future applications for site certification. Further, ODOE's evaluation method suggests that applicants in the future will need to supply evidence of that each project must uniquely satisfy the Goal 3 exception requirements, for unique reasons. We believe that only considering "reasons" individually and not holistically sets a precedent that will limit the Council's ability to evaluate and approve Goal 3 exceptions in the future. And this change is inconsistent with the Supreme Court's standard of review for Goal 3 exceptions based on substantial evidence.

We fully recognize the bedrock of Oregon's land use regulatory system is to protect and enhance agricultural land uses. The Nolin Hills project will in fact enhance local agricultural practices, with a substantial landowner poised to make new and significant investments in local agriculture. But we also urge the Council to consider, in future applications, how Council policy can have unexpected consequences of undermining significant and compelling legal and policy directives to aggressively mitigate the devastating impacts of climate change. The Council should take care in how it measures these policies against each other.

This is a challenging balance in challenging times, and one that the Council is well positioned to undertake. We appreciate the Council's continuing commitment to implement and enhance Oregon's signature objective standards-based energy facility permitting process.

Very truly yours,



Timothy L. McMahan
Stoel Rives LLP

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