BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Request for Amendment #4 of the Site Certificate for the Stateline Wind Project	))))	FINAL ORDER ON AMENDMENT #4

The Oregon Energy Facility Siting Council

March 27, 2009

STATELINE WIND PROJECT:
FINAL ORDER ON AMENDMENT #4

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LIST OF ABBREVIATIONS

Applicants	FPL Vansycle (current certificate holder) and FPL Stateline (proposed partial transferee)
BLM	Bureau of Land Management
BPA	Bonneville Power Administration
Council	Energy Facility Siting Council
CRP	Conservation Reserve Program
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
CUP	Conditional Use Permit
Department	Oregon Department of Energy
DEQ	Oregon Department of Environmental Quality
DOGAMI	Oregon Department of Geology and Mineral Industries
DSL	Oregon Department of State Lands
FAA	Federal Aviation Administration
FPL Stateline	FPL Energy Stateline II, Inc.

FPL Vansycle	FPL Energy Vansycle, LLC
LCDC	Land Conservation and Development Commission
MW	megawatt or megawatts
NRCS	U.S. Department of Agriculture, Natural Resources Conservation Service
O&M	Operations and maintenance
ODFW	Oregon Department of Fish and Wildlife
OPRD	Oregon Parks and Recreation Department
OWMP	Oregon Wildlife Monitoring Plan
OWRD	Oregon Water Resources Department
PPI	Producer Price Index published by the U.S. Bureau of Labor Statistics
RAI	Department's requests for additional information (November 17 and December 26, 2008)
Response to RAI	Response to Requests for Additional Information (January 26, 2009)
SCADA	Supervisory, Control and Data Acquisition (the control system for the energy facility)
SHPO	State Historic Preservation Office
SWP	Stateline Wind Project
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
WGS	Washington ground squirrel
WMMP	Wildlife Monitoring and Mitigation Plan (formerly, "Oregon Wildlife Monitoring Plan")

STATELINE WIND PROJECT:
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I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this final order in accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by the current certificate holder, FPL Energy Vansycle, LLC (FPL Vansycle), and FPL Energy Stateline II, Inc. (FPL Stateline), for amendment of the site certificate for the Stateline Wind Project (SWP), a wind energy facility in Umatilla County, Oregon.

On September 14, 2001, the Council issued a site certificate to FPL Vansycle for the SWP. FPL Vansycle began construction of the first phase of the SWP on September 17, 2001, and completed construction on December 20, 2001. The first phase of construction (Stateline 1) consists of 126 Vestas V47-660-kW wind turbines with a combined peak electric generating capacity of approximately 83 megawatts (MW) and related facilities. The facility began commercial operation on December 21, 2001.

On May 17, 2002, the Council approved a request by FPL Vansycle for an expansion of the SWP (Amendment #1). Amendment #1 authorized a second phase of construction (Stateline 2) consisting of 60 Vestas V47-660-kW wind turbines and related facilities. FPL Vansycle completed construction of these turbines on December 15, 2004. Amendment #1 increased the combined peak generating capacity of the SWP to approximately 123 MW.

On June 6, 2003, the Council approved a request by FPL Vansycle for a further expansion of the SWP (Amendment #2). Amendment #2 authorized a third phase of construction (Stateline 3) consisting of 279 Vestas V47-660-kW wind turbines and related facilities. Amendment #2 included a site certificate condition (Condition 106) requiring the certificate holder to begin construction of Stateline 3 by June 23, 2005.

On March 28, 2005, FPL Vansycle requested an extension of the deadline to begin construction of Stateline 3 (Amendment #3). On June 20, 2005, the Council approved Amendment #3 and extended the deadline to begin construction to June 23, 2007.[1]

On December 22, 2006, FPL Vansycle requested a further extension of the deadline to begin construction of Stateline 3 (Amendment #4). On April 10, 2007, FPL Vansycle withdrew its request for Amendment #4 before the Council had taken any action on the amendment request.[2] The deadline to begin construction of Stateline 3 expired on June 23, 2007. None of the Stateline 3 facilities approved by Amendment #2 have been built.

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

[1] In addition to extending the construction deadline, Amendment #3 modified Condition 105, which pertains to compliance with Oregon noise control regulations.
[2] Email from Kenneth Stein, April 10, 2007.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

On October 24, 2008, FPL Vansycle and FPL Stateline (the applicants) submitted their "Revised Application for a Fourth Amended Site Certificate, Including a Request for Partial Transfer of the Site Certificate as It Pertains to Stateline 3" (Revised Request for Amendment #4). On November 6, 2008, the applicants sent copies of the amendment request to a list of reviewing agencies provided by the Oregon Department of Energy (Department) with a memorandum from the Department requesting agency comments by December 19, 2008. On November 12, the Department sent notice of the amendment request to all persons on the Council's mailing list, to the special list established for the facility and to updated list of property owners supplied by the certificate holder, requesting public comments by December 19.

By letter dated November 13, the Department notified the applicants that the amendment request would require "extended review" (OAR 345-027-0070(2)). The Department advised the applicants that the proposed order would be issued no later than February 20, 2009.

The Department received agency comments from the State Historic Preservation Office (SHPO)[3], the Water Resources Department (OWRD)[4], Oregon Parks and Recreation Department (OPRD)[5], Umatilla County[6], the Oregon Department of Fish and Wildlife (ODFW)[7] and the Oregon Department of Geology and Mineral Industries (DOGAMI)[8]. The Department received public comment from Eurus Combine Hills I LLC (Eurus).[9]

SHPO requested a copy of the final cultural resources survey report that is referenced in the amendment request.[10] The applicants sent a copy of the report to SHPO when it became available on January 15, 2009. OWRD advised the Department of relevant statutes and administrative rules but otherwise had no substantive comments. OPRD had no substantive comments. Umatilla County provided the Department with the substantive criteria applicable to the land use analysis discussed herein. ODFW had general and specific comments and requested additional information regarding affected habitat, threatened and endangered species and the applicants' proposed Wildlife Mitigation Plan and Revegetation Plan (Appendices P-1 and P-2 of the amendment request). The Department requested that the applicants respond to the issues raised in the ODFW comment letter.[11] The applicants responded to the ODFW letter in their supplemental information.[12] DOGAMI requested the results of future site-specific geotechnical investigation prior to construction of the Stateline 3 components and advised the applicants to prepare reports according the Guidelines for Engineering Geology Reports and Site-Specific Hazard Report (Open File Report 00-00-4).

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[3] Letter from Susan Lynn White, State Historic Preservation Office, November 13, 2008.
[4] Letter from Jerry Sauter, Water Resources Department, November 17, 2008.
[5] Email from Jan Houck, Oregon Parks and Recreation Department, November 21, 2008.
[6] Letter from Carol Johnson, Umatilla County Planning, December 18, 2008.
[7] Letter from Rose Owens, Oregon Department of Fish and Wildlife, December 18, 2008.
[8] Letter from William Burns, Department of Geology and Mineral Industries, January 15, 2009.
[9] Letter from James E. Benedict, attorney for Eurus Combine Hills I LLC, December 19, 2008.
[10] Revised Request for Amendment #4, Exhibit S, p. 3.
[11] Request for Additional Information #2, December 26, 2008.
[12] Response to Requests for Additional Information, January 26, 2009.

DOGAMI advised that the facilities should be designed to meet the current Oregon Structural Specialty Code (OSSC 2007) and the 2006 International Building Code.

The comment letter from Eurus asserted that the proposed new Stateline 3 configuration would interfere with Combine Hills I, a 41-MW wind energy project on adjacent land that is not under Council jurisdiction. Eurus stated: "Because of the prevailing wind, several of the FPL turbines would create a wake that would interfere with the operation of certain Combine Hills I turbines." Eurus asserted that "the economic loss to Combine Hills I would be significant" due to "decreased energy production and reduced energy sales revenues." Eurus requested "that Stateline 3 be modified to eliminate the interference with the operation of the Combine Hills I wind development." Eurus advanced numerous legal arguments in support of its position, which Eurus summarized as follows:

> Unless EFSC imposes additional site certificate conditions to mitigate the impacts on Combine Hills I, EFSC cannot find that Stateline 3 as proposed in the Revised Application meets all siting standards and must therefore deny the site certificate amendment. The standards that Stateline 3 fail to meet are identified below. In addition, granting the site certificate amendment is contrary to Oregon state law and Oregon and U.S. Constitutions. Moreover, without conditions to mitigate the impact on Combine Hills I, the project is contrary to state energy policy.

The Department requested that the applicants respond to the issues raised in the Eurus comment letter.[13] The applicants provided a detailed response to the legal arguments raised by Eurus.[14]

In 2003, Eurus Oregon Wind Power Development LLC raised identical legal arguments in a request for a contested case proceeding on the Department's Proposed Order on Amendment #2. At that time, the Department advised the Council that there was no legal authority establishing a common law right to preclude development of competing wind energy facilities on adjacent property as had been claimed by Eurus.[15] The Department stands by that advice today and recommended that the Council defer to Oregon statutory law on this issue.[16] ORS 105.900 defines a "wind energy easement" as "any easement, covenant or condition designed to insure the undisturbed flow of wind across the real property of another." Eurus has not negotiated a wind energy easement with the landowner of the adjacent properties where the applicants propose to build the new Stateline 3 components. In the absence of a wind energy easement, Eurus has no right to the "undisturbed flow of wind" on property they do not own, and the Council should not step in to restrict construction of Stateline 3 as requested by Eurus.

The Department analyzed the Revised Request for Amendment #4 for compliance with all applicable Council standards. The Department's recommended findings and conclusions were discussed in a Proposed Order issued on February 20, 2009. The Department recommended that the Council approve the amendment request, subject to revisions of the Site Certificate discussed below at page 128.

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[13] Email from John White, Oregon Department of Energy, December 22, 2008.
[14] Co-Applicants' Response to Comments of Eurus Combine Hills I LLC, January 26, 2009.
[15] Memorandum to the Energy Facility Siting Council, May 27, 2003.
[16] ORS 105.900 - .915

After issuing the Proposed Order on February 20, the Department issued a public notice as required under OAR 345-027-0070(5) and posted the notice on the Department's Internet website. The notice invited public comment and gave a deadline of March 23, 2009, for comments or contested case requests. The Department did not receive any comments or contested case requests by the deadline of March 23.

At a public meeting in Pendleton, Oregon, on March 27, 2009, the Council held an informational hearing on the request for partial transfer of the site certificate. The Council considered the Department's recommendations, and voted to approve the amendment request.

III. DESCRIPTION OF THE PROPOSED AMENDMENT

FPL Vansycle and FPL Stateline request amendments to the Third Amended Site Certificate for the Stateline Wind Project (Site Certificate) that, if approved, would authorize a reconfigured third phase of construction (Stateline 3) and would partially transfer the Site Certificate from the current certificate holder (FPL Vansycle) to FPL Stateline.

The applicants propose a "modification of the attributes of Stateline 3."[17] The effect of the requested "modification" would be authorize construction and operation of the new Stateline 3 components described in the amendment request and to withdraw authorization to construct and operate the previously-approved Stateline 3 facilities.[18] The applicants propose two design options for the new Stateline 3 configuration. The first option would consist of up to 43 Siemens 2.3-MW wind turbines having a combined peak generating capacity of up to 98.9 MW. The second option would consist of up to 67 GE 1.5-MW turbines having a combined peak generating capacity of up to 100.5 MW. Under either design option, Stateline 3 would include related or supporting facilities including a substation, new access roads, an underground 34.5-kW power collection system, an aboveground 230-kV transmission line (to connect the facility to the regional power grid), a supervisory control and data acquisition (SCADA) system and an operations and maintenance building.

In addition, FPL Vansycle and FPL Stateline request a partial transfer of the Site Certificate. The current certificate holder is FPL Vansycle. Under Council rules (OAR 345-027-0100) a transfer of a site certificate is necessary when the person who will have the legal right to possession and control of the site or facility does not have authority under the site certificate to construct, operate or retire the facility. In this case, a "partial transfer" is requested so that FPL Vansycle would retain authority to operate and retire the currently operating Stateline facility (Stateline 1&2) while FPL Stateline would have authority under the amended Site Certificate to construct, operate and retire the third phase of construction (Stateline 3). If the Council approves the amendment request, FPL Stateline would become a certificate holder and FPL Vansycle would continue to be a certificate holder. The obligations of the certificate holders as described in the terms and conditions of the site certificate would be divided between FPL Vansycle and FPL Stateline so that FPL Vansycle would be responsible for compliance with conditions relating Stateline 1 and 2 and FPL Stateline would be responsible for compliance with conditions relating to Stateline 3.

[17] Revised Request for Amendment #4, p. 3.
[18] The previously-approved Stateline 3 facilities are described in the Final Order on Amendment #2 (June 6, 2003) and summarized at pages 4 and 5 of that order.

1. Amendment Procedure

Under OAR 345-027-0050(1), a certificate holder must request a site certificate amendment "to design, construct, operate or retire a facility in a manner different from the description in the site certificate" if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate.

The proposed changes to the site certificate would authorize construction (Stateline 3) outside of the site boundary previously approved by the Council. The construction and operation of Stateline 3 could have adverse impacts that the Council has not addressed in earlier orders on the SWP and that could affect resources protected by Council standards. The proposed changes would require new site certificate conditions and changes to current conditions. For these reasons, amendment of the site certificate is necessary.

The proposed amendment would modify the site of the SWP facility and would make other changes to the construction and operation of the facility allowed under the site certificate. For areas that would be affected by construction and operation of Stateline 3, the Council must consider whether the facility complies with all Council standards (OAR 345-027-0070(10)(a)). In addition, for all site certificate amendments, the Council must consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate (OAR 345-027-0070(10)(d)). We address compliance with these requirements in Sections IV and V.

An amendment that partially transfers the site certificate is subject to the procedures described in OAR 345-027-0100. To request a transfer, the transferee (in this case, FPL Stateline) must submit a written request to the Department that includes the information described in OAR 345-021-0010(1)(a) (information about the applicant), (d) (organizational expertise) and (m) (financial capability), a certification that the transferee agrees to abide by all terms and conditions of the site certificate currently in effect and, if known, the date of the transfer of ownership.[19]

The amendment request does not contain an explicit certification that FPL Stateline agrees to abide by "all terms and conditions of the site certificate currently in effect" and, instead, proposes a division of responsibility for compliance with the site certificate terms and conditions as modified upon the Council's approval of Amendment #4. The modified terms and conditions of the site certificate, as proposed by the applicants, include a "no-cross-default provision that would not expose one co-applicant to liability in the event the other co-applicant experienced a compliance problem regarding its portion of the Facility."[20]

[19] These requirements are set forth in OAR 345-027-0100(4), which also requires, if applicable, the information described in OAR 345-021-0010(1)(y)(O)(iv) (carbon dioxide emissions). Information relating to the carbon dioxide emissions standard is not applicable to the SWP.

[20] Revised Request for Amendment #4, p. 4.

The amendment request does not state the date of the partial transfer of ownership of the SWP to FPL Stateline. If approved by the Council, Amendment #4 would authorize FPL Stateline to construct and operate the Stateline 3 portion of the SWP upon the effective date of the amended site certificate.

The Council must hold a public informational hearing before acting on the transfer request (OAR 345-027-0100(7)). To approve a partial transfer of the site certificate, OAR 345-027-0100(8) requires the Council to find that:

(a) The transferee complies with the standards described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1); and

(b) The transferee is lawfully entitled to possession or control of the site or the facility described in the site certificate.

OAR 345-024-0710(1) pertains to the carbon dioxide emissions standard and is not applicable in this case. OAR 345-022-0010 is the Organizational Expertise Standard and OAR 345-022-0050 is the Retirement and Financial Assurance Standard. The compliance of FPL Stateline (the transferee) with these standards is discussed herein at pages 13 and 15.

The amendment request indicates that the current certificate holder, FPL Vansycle, would "transfer all its rights, duties and obligations under the Site Certificate pertaining to Stateline 3 to its affiliate, FPL Stateline."[21] Accordingly, FPL Stateline would be lawfully entitled to possession or control of the site of the facility (Stateline 3) described in the site certificate. Both FPL Vansycle and FPL Stateline are wholly-owned, indirect subsidiaries of FPL Energy, LLC. On January 7, 2009, FPL Energy, LLC, announced that it had changed its name to NextEra Energy Resources, LLC.[22] The applicants state that "the only material differences between FPL Vansycle and FPL Stateline relate to the differing financing arrangements and the differing power sale arrangements for the different Stateline phases."[23]

The Council may act concurrently on the requests to reconfigure the third phase of construction and to partially transfer the site certificate, as described in OAR 345-027-0100(12). The Department and the Council must follow the procedures of OAR 345-027-0100 and the procedures of OAR 345-027-0070 in reviewing the combined amendment requests.

2. Amendments to the Site Certificate as Proposed by the Applicants

As an attachment to the Revised Request for Amendment #4, the applicants proposed specific changes, additions and deletions in the form of a "redline" revision of the Third Amended Site Certificate. The attachment is incorporated herein by this reference. The Department recommended that the Council approve the substance of the site certificate amendments proposed by the applicants with other modifications consistent with the amendment request. The Department's recommended revisions are discussed herein beginning at page 128.

In addition to the changes to the language of the Site Certificate, the amendment request proposes revisions to the *Oregon Wildlife Monitoring Plan* and the *Revegetation*

[21] Revised Request for Amendment #4, p. 3.
[22] Response to RAI, Attachment 10.
[23] Revised Request for Amendment #4, Exhibit D, p. 2.

Plan.[24] The amendment request proposes adoption of a habitat mitigation plan. Currently habitat mitigation requirements are included within the *Revegetation Plan*. The Department supports the applicants' proposal for a separate habitat mitigation plan for Stateline 3.[25] The *Oregon Wildlife Monitoring Plan* is incorporated in Condition 93 of the current site certificate; the *Revegetation Plan* (including habitat mitigation requirements for Stateline 1&2) is incorporated in Conditions 65, 66, 67 and 68. The Department's recommended modifications of the *Oregon Wildlife Monitoring Plan* (renamed the *Wildlife Monitoring and Mitigation Plan*) are addressed in Revision 52, and the Department's recommended revisions of the *Revegetation Plan* are addressed in Revision 45. Revision 68 would modify Condition 112 to incorporate a new *Stateline 3 Habitat Mitigation Plan* in the Fourth Amended Site Certificate.

3. Description of the Facility as Authorized by Amendment #4

If the Council approves Amendment #4, the certificate holders would be authorized to construct and operate the SWP facility. FPL Vansycle would be authorized to construct and operate the parts of the facility that the Council approved in the Final Order on the Application and the Final Order on Amendment #1 (Stateline 1&2). FPL Stateline would be authorized to construct and operate the parts of the facility authorized by Council action on Amendment #4 (Stateline 3). These two separate parts of the SWP are described below.

(a) Stateline 1&2

Turbines

Stateline 1&2 consists of 186 Vestas V47-660-kilowatt (kW) wind turbines, each having a peak generating capacity of 0.66 MW.[26] FPL Vansycle has built and is operating the Stateline 1&2 turbines. The combined peak generating capacity of the operating turbines is approximately 123 MW.

Power Collection System

The wind turbines generate power at 690 volts. A transformer adjacent to each tower transforms the power to 34.5 kV. From there, power is transmitted via underground 34.5-kV electric cables buried directly in the soil approximately 3 to 4 feet below the ground surface. In some cases, trenches run from the end of one turbine string to the end of an adjacent turbine string to link the turbines via the underground network. The underground collector system links the facility's turbines to a substation located in Washington. Overhead transmission lines, located entirely within Washington, connect the substation to the regional power grid. The substation and aboveground interconnection lines in Washington are not subject to the Site Certificate.

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[24] The Council approved the current Oregon Wildlife Monitoring Plan on January 20, 2006, following a review of fatality monitoring results. The January 2006 revisions included a package of additional mitigation measures for the effects of the facility on raptors. The Council approved the current Revegetation Plan on June 3, 2003, in the Final Order on Amendment #2.

[25] Separation of the Revegetation Plan (which addresses restoration of areas temporarily disturbed by facility construction) from the Habitat Mitigation Plan (which addresses mitigation for permanent habitat impacts) is consistent with the Council's treatment of these issues for other wind energy facilities within Council jurisdiction.

[26] The site certificate authorizes up to 187 turbines, but the certificate holder chose to build 186.

The site certificate application for Stateline 1 described the cumulative length of the underground collector system as 85,209 linear feet (approximately 16.1 miles).[27] The Request for Amendment #1 described the cumulative length of the underground collector system for Stateline 2 as 45,000 linear feet (8.5 miles).[28] Thus, the total cumulative length of the Stateline 1&2 collector system is approximately 24.6 miles.

Meteorological Towers

The Stateline 1&2 portion of the facility includes six permanent meteorological (met) towers to measure wind conditions.

Operations and Maintenance Building

The facility includes an operation and maintenance (O&M) facility, which is a satellite to the primary O&M facility located in Washington.[29] The satellite O&M facility is located along Butler Grade Road south of Gardena and just south of the state line in Oregon.

Access Roads

County roads that extend south from Highway 12 in Washington (Hatch Grade Road and Butler Grade Road) and north from Oregon Highway 11 (Vansycle Canyon Road and Butler Grade Road) are the primary routes of access to the facility site. From the County roads, a web of private farm roads provides access to most of the ridges upon which the facility is located. Additional access roads are located along the length of each turbine string and between strings to connect each turbine string to the next.

For Stateline 1, the Council approved construction of approximately 12.2 miles of new access roads and improvement of approximately 4.3 miles of existing farm roads (widening, grading and graveling).[30] For Stateline 2, the Council authorized construction of an additional 6.5 miles of new access roads and improvement of approximately 1.5 miles of existing farm roads.[31] Thus, the total cumulative length of Stateline 1&2 access roads is approximately 18.7 miles of new roads and 5.8 miles of improved farm roads.

Construction Disturbance Areas

In addition to the area occupied by the permanent facility components (approximately 87 acres), construction of Stateline 1&2 affected approximately 196 acres.[32]

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[27] Application Supplement, Exhibit C, Table C-2, as revised by "Errata Sheet–6/14/01." The site certificate application was further modified by a letter from Andrew Linehan (CH2M HILL) on behalf of the applicant, dated July 23, 2001. The letter described the rerouting of underground collector cable between turbine string HG-N in Oregon and PB in Washington. The re-routing added a net 4,000 linear feet of underground collector line in Oregon (approximately 0.75 miles).

[28] Request for Amendment, January 2002, Table 2.

[29] The satellite O&M facility is an existing structure belonging to the landowner. It would not be significantly altered for use by the certificate holder (*Final Order on the Application*, p. 12).

[30] *Final Order on the Application*, p. 11.

[31] *Final Order on Amendment #1*, p. 3.

[32] Data for Stateline 1 is from the Application Supplement, Exhibit P, p. 39, as revised by "Errata Sheet–6/14/01" and by a letter from Andrew Linehan (July 23, 2001). Data for Stateline 2 is from the Request for Amendment, January 2002, Tables 3 and 4, pp. 31-32.

Stateline 1&2 Site and Site Boundary

The SWP is located in Umatilla County, north of Helix, Oregon, and south of the Oregon-Washington border. The Stateline 1&2 turbines and related facilities are located in Township 6 North, Ranges 32 and 33 East.[33]

As defined by OAR 345-001-0010, the "site boundary" is the perimeter of the site the energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors.[34] The Council has recognized the need for wind energy developers to have flexibility to "microsite" the final location of wind turbines and related infrastructure after issuance of a site certificate, based on turbine selection, geotechnical constraints, site-specific wind resource factors, avoidance of high-value wildlife habitat and the desire to reduce conflict with farming practices. Beginning in 2006, the Council has approved micrositing areas in site certificates and site certificate amendments for wind facilities.

The original site certificate and the First Amended Site Certificate for the SWP (which together authorized the construction and operation of Stateline 1&2) predate the Council's practice of approving micrositing areas. Nevertheless, the Council specified turbine "corridors" in the location description for Stateline 1:[35]

> Specific individual turbine locations would be within 300-foot wide corridors centered on the turbine locations depicted in Figures B-3 (three maps dated June 15, 2001) of the application and Figures 1 through 4 (dated July 20, 2001) attached to the letter from Andrew Linehan and received by the Office of Energy on July 23. A minimum distance of 250 feet would separate individual turbines. Figures B-2, B-3 and C-1 of the application and Figures 1 through 4 (attached to the letter from Andrew Linehan and received by the Office of Energy on July 23), incorporated herein by this reference, show the location of the proposed facility.

The language specifying 300-foot turbine corridors is incorporated by reference in the current site certificate.[36] The Final Order on Amendment #1 included a description of the location of the Stateline 2 wind turbines and related facilities that incorporated by reference Figures 1 and 2 of the Request to Amend Site Certificate.[37] The Final Order on Amendment #1 did not modify the description of 300-foot turbine corridors as applied to the Stateline 2 turbines. The "site boundary" for Stateline 1&2 is the perimeter of the wind turbine corridors and related or supporting facilities described above, together with the laydown areas and temporary disturbance areas described in the site certificate application and the Request for Amendment #1.

(b) Stateline 3

Turbines

In the amendment request, the applicants propose two options for the third phase of construction. If approved by the Council, the certificate holders would be authorized to

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[33] *Final Order on Amendment #1*, p. 3, and Figure 1, Request for Amendment (January 2002), Exhibit 3.
[34] The facility "site," as defined under ORS 469.300, includes all land upon which the energy facility and its related or supporting facilities are located.
[35] *Final Order on the Application* (September 14, 2001), p. 13.
[36] *Third Amended Site Certificate* (June 20, 2005), p. 4, lines 14-16.
[37] *Final Order on Amendment #1*, p. 3, fn. 6.

construct and operate up to 67 GE 1.5-MW wind turbines or up to 43 Siemens 2.3-MW wind turbines. If 1.5-MW turbines are used, Stateline 3 would have a combined peak generating capacity of up to 100.5 MW. If 2.3-MW turbines are used, Stateline 3 would have a combined peak generating capacity of up to 98.9 MW. Revision 9 would modify the Site Certificate to specify the turbine selection options for Stateline 3.

Power Collection System

A transformer adjacent to each tower transforms the power from the wind turbine generator to 34.5 kV. Up to 24.4 miles of 34.5-kV collector lines would transport the power from the turbines to the project substation.[38] The entire system of collector lines for Stateline 3 would be installed underground.

Meteorological Towers

The operators of Stateline 3 would rely on data from the existing met towers for Stateline 1&2.[39] In addition, two new met towers would be built for Stateline 3. The new met towers would be unguyed towers up to 80 meters in height. The towers would be monopole structures on concrete foundations.[40]

Substation and Interconnection

A new substation would be constructed within the Stateline 3 site boundary at a location near Gerking Flat Road.[41] The substation, the O&M building and a temporary laydown area would occupy an area of not more than 10 acres.[42] Power from the collector system would be stepped-up to 230 kV at the substation. A new, aboveground 230-kV transmission line would connect the substation to an existing 230-kV line. The point of connection would be in Washington between the existing Nine Mile and Wallula substations. The proposed route of the 230-kV transmission line in Oregon is shown in Exhibits C-2 and C-3 of the amendment request. Connection with the regional transmission system would be through the PacifiCorp Wallula Substation. The length of the transmission line would be approximately 12.89 miles in Oregon and 3.1 miles in Washington.[43]

Operations and Maintenance Building

An O&M building of up to 4,500 square feet would be constructed within the Stateline 3 site boundary, adjacent to the substation. Water would be supplied from a new on-site well. Wastewater generated at the O&M building would be discharged to a new on-site septic system. Telephone and electrical service would be supplied from existing service on Gerking Flat Road along existing County road right-of-way or along project access roads.[44]

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[38] Revised Request for Amendment #4, Exhibit B, p. 2. The GE option would require the greater combined length of collector lines (up to 24.4 miles). The Siemens option would require up to 20.1 miles of collector lines.
[39] Revised Request for Amendment #4, Exhibit B, p. 5.
[40] Email from Karl Kosciuch, February 3, 2009.
[41] The location is shown on Figures C-2a and C-3a (Revised Request for Amendment #4, Exhibit C).
[42] Response to RAI B4.
[43] The applicants provided a detailed description of the transmission line and support structures (Response to RAI B8.
[44] Response to RAI B5.

Access Roads

Existing farm roads will be used to the extent possible. Up to 23.1 miles of new access roads would be constructed.[45] During construction, the new access roads would be up to 37 feet wide, including shoulder areas.[46] New access road width would be reduced to 16 feet upon completion of facility construction. Existing farm roads may be improved with a new gravel surface, but no improvements that would result in land disturbance would be made to existing roads.

Construction Disturbance Areas

In addition to the area occupied by the proposed permanent facility components for Stateline 3, construction would affect laydown and staging areas, parking areas for construction equipment and parking areas for construction worker's vehicles. Construction cranes would travel along turbine access roads and would not cross adjacent land.[47] The total construction disturbance area would be up to 327.4 acres.[48]

Gravel needed for construction purposes would be supplied from an existing quarry operated under a Conditional Use Permit issued by Umatilla County.[49] Concrete for construction purposes would be supplied from a temporary batch plant that would be dismantled and removed when construction of Stateline 3 is complete.[50] The batch plant is considered a related or supporting facility for which the Council must make land use findings as discussed herein. Any other permits required for the batch plant operation would be third-party permits obtained by the applicants' construction contractor.

Stateline 3 Site and Site Boundary

The proposed Stateline 3 is located in Umatilla County, Oregon, north of the town of Helix. The Stateline 3 turbines and related facilities are located in Township 5N Range 33E Sections 1, 2, 3, 4, 10, 11, 12, 13, 14; Township 5N Range 34E Sections 7, 8, 9, 15, 16, 17, 18, 19, 20, 21; Township 6N Range 32E Sections 13, 14, 24; and Township 6N Range 33E Sections 17, 18, 19, 20, 21, 27, 28, 33, 34, 35.[51] The Stateline 3 facilities would have a cumulative footprint of up to 56.3 acres (if 1.5-MW turbines are used) or 34.6 acres (if 2.3-MW turbines are used).[52]

As defined by OAR 345-001-0010, the "site boundary" is the perimeter of the site the energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors.[53] The site boundary for Stateline 3 is the perimeter

[45] Revised Request for Amendment #4, Exhibit B, p. 6. The GE option would require the greater combined length of new access roads (up to 23.1 miles). The Siemens option would require up to 16.6 miles of new access roads.
[46] Response to RAI, Exhibit B, p. 2.
[47] Response to RAI C3.
[48] Based on the maximum impacts shown in Table 8 herein. Estimated actual construction area disturbance would be 320.7 acres for the 1.5-MW turbine layout and 205.4 acres for the 2.3-MW layout (Response to RAI, Exhibit P, Tables P-3 and P-4).
[49] Response to RAI G1. Although the quarry is located within the site boundary (see Figures C-2a and C-3a), it is a separate use that is not a related or supporting facility.
[50] Response to RAI G2.
[51] Revised Request for Amendment #4, Exhibit C, p. 1.
[52] Response to RAI, Exhibit P, Tables P-3 and P-4.
[53] The facility "site," as defined under ORS 469.300, includes all land upon which the energy facility and its

of the micrositing areas for the wind turbines and related or supporting facilities described above, together with the laydown areas and temporary disturbance areas described in the amendment request.[54] The proposed Stateline 3 site boundary is shown in Figures C-2 and C-3.[55] The applicants provided a preliminary legal description that includes a map of the site boundary and identification of all land affected by the proposed construction of the new Stateline 3 components.[56]

IV. THE COUNCIL'S SITING STANDARDS: FINDINGS AND CONCLUSIONS

The Council must decide whether the amendment complies with the facility siting standards adopted by the Council. In addition, the Council must impose conditions for the protection of the public health and safety, conditions for the time of commencement and completion of construction and conditions to ensure compliance with the standards, statutes and rules addressed in the project order. ORS 469.401(2).

The Council is not authorized to determine compliance with regulatory programs that have been delegated to another state agency by the federal government. ORS 469.503(3). Nevertheless, the Council may consider these programs in the context of its own standards to ensure public health and safety, resource efficiency and protection of the environment.

The Council has no jurisdiction over design or operational issues that do not relate to siting, such as matters relating to employee health and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).

In making its decision on an amendment of a site certificate, the Council applies the applicable State statutes, administrative rules and local government ordinances that are in effect on the date the Council makes its decision, except when applying the Land Use Standard. In making findings on the Land Use Standard, the Council applies the applicable substantive criteria in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-0070(9).

1. General Standard of Review

OAR 345-022-0000

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

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

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been

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related or supporting facilities are located.

[54] Revised Request for Amendment #4, Exhibit C, p. 2; Response to RAI, Exhibit C, pp. 1-2.

[55] Response to RAI, Exhibit C, Figures C-2 and C-3.

[56] Email from Eric Lubell, January 28, 2009.

delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

* * *

We address the requirements of OAR 345-022-0000 in the findings of fact, reasoning, conditions and conclusions of law discussed in the sections that follow. Upon consideration of all of the evidence in the record, we state our general conclusion regarding the amendment request in Section VII.

2. Standards about the Applicant

(a) Organizational Expertise

OAR 345-022-0010

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

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

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

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council

issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Findings of Fact

A. Organizational Expertise

In the Final Order on the Application and in the Final Orders on Amendments #1, #2 and #3, the Council found that FPL Vansycle had the organizational, managerial and technical expertise to construct and operate the SWP. FPL Vansycle has continued to operate the SWP facility in compliance with all terms and conditions of the Third Amended Site Certificate and continues to meet the Organizational Expertise Standard. The amendment request proposes a partial transfer of the site certificate from FPL Vansycle to FPL Stateline. In particular, the applicants propose that FPL Stateline would have the authority under the amended site certificate to construct and operate Stateline 3 (as described in the amendment request).

Although FPL Stateline is a new applicant, both FPL Vansycle and FPL Stateline are wholly-owned, indirect subsidiaries of NextEra Energy Resources LLC (*formerly* FPL Energy LLC). NextEra Energy Resources LLC owns and operates nearly 5,100 MW of wind generation at more than 50 wind facilities (7,500 turbines) in 16 states.[57] The organizational expertise of FPL Stateline is equivalent to the organizational expertise of FPL Vansycle, and the differences between the entities "relate to the differing financing arrangements and the differing power sale arrangements for the different Stateline phases."[58] The qualifications of the individuals whose expertise would be available to both applicants are described in the amendment request.[59] The Council finds that FPL Stateline has adequate organizational expertise to construct, operate and retire the proposed Stateline 3 portion of the SWP.

B. Third-Party Permits

Up to 8.7 million gallons of water would be needed for dust control, road and earthwork compaction and concrete mixing during the construction of Stateline 3.[60] The source of this water would be the City of Helix under an existing municipal water right or a private landowner in the area under a limited license to withdraw water for construction purposes.

The amendment request includes a copy of the Helix water right as well as a letter from the mayor of Helix indicating the City's willingness to supply water at the rate of up to 120,000 gallons per day.[61] Based on this information, the Council finds that the applicants have a reasonable likelihood of entering into a contractual or other arrangement with the City of Helix for access to 8 million gallons of water under the City's existing water right (a third-party permit).

[57] Revised Request for Amendment #4, Exhibit D, p. 1.
[58] Revised Request for Amendment #4, Exhibit D, p. 2.
[59] Revised Request for Amendment #4, Exhibit D, Appendix D-1.
[60] Revised Request for Amendment #4, Exhibit U, p. 19.
[61] Revised Request for Amendment #4, Exhibit O, Appendices O-1 and O-2.

Alternatively, water may be available from a private landowner, under a private water purchase agreement.[62] The project construction contractor has applied for a Limited Water Use License. Umatilla County has provided the required land use information, and the local Watermaster has completed the necessary Water Availability Statement.[63] The Council finds that the contractor has a reasonable likelihood of getting the necessary permit and that the certificate holders have a reasonable likelihood of entering into a contractual or other arrangement with their construction contractor.

Concrete mix would be supplied from a temporary batch plant constructed to serve the construction requirements of Stateline 3.[64] The batch plant would be dismantled when construction is completed. The batch plant is a related or supporting facility as defined in OAR 345-001-0010. The project construction contractor would obtain a DEQ permit required for operation of the batch plant (WPCF-1000), and given the contractor's experience in obtaining similar permits, the Council finds that the contractor has a reasonable likelihood of getting the necessary permit and that the certificate holders have a reasonable likelihood of entering into a contractual or other arrangement with their construction contractor.

Conclusions of Law

Based on the findings stated above, the Council concludes that FPL Vansycle and FPL Stateline would meet the Council's Organizational Expertise Standard if Amendment #4 were approved.

(b) Retirement and Financial Assurance

OAR 345-022-0050

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

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

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

Findings of Fact

A. Retirement

In the Final Order on the Application and in the Final Order on Amendment #1, the Council found that the site of the first and second phases of construction of the SWP could be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. The Council found that the certificate holder had demonstrated a reasonable likelihood of obtaining a bond or letter of credit, satisfactory to the Council, in an amount adequate to restore the site. The amount of the financial assurance bond or letter of credit for Stateline 1&2 is determined under Conditions 80 (for Stateline 1) and

[62] Revised Request for Amendment #4, Exhibit O, Appendix O-3
[63] Response to Requests for Additional Information, Attachment 5.
[64] Response to RAI G2.

102 (for Stateline 2). The amount is subject to annual adjustment for inflation. The certificate holder has provided financial assurance in compliance with these site certificate conditions. In accordance with OAR 345-27-0070(10)(d), the Council must consider whether the amount of the bond or letter of credit that is in place for Stateline 1&2 remains adequate to pay the estimated site restoration costs for the Stateline 1&2 components of the SWP.

In the Final Order on Amendment #2, the Council found the site of the third phase of construction as authorized by that amendment (the old Stateline 3 configuration) could be adequately restored to a useful, non-hazardous condition. The Council found that the certificate holder had demonstrated a reasonable likelihood of obtaining financial assurance satisfactory to the Council. The amount of financial assurance for the old Stateline 3 configuration would be determined under Condition 109, prior to construction. Because construction of the old Stateline 3 configuration was never begun, the certificate holder has not provided the additional financial assurance described in Condition 109.

In the Request for Amendment #4, the applicants have proposed a new configuration for the third phase of construction of the SWP. Compared to the old Stateline 3 configuration, the new configuration would have fewer turbines, and the facility would occupy a smaller footprint. The components of the new Stateline 3 configuration are the typical components common to wind energy facilities, including access roads, an O&M building, a substation and an aboveground 230-kV transmission line. The Council must make a reasonable estimate of the cost to restore the site of the Stateline 3 components to a useful, non-hazardous condition.

OAR 345-022-0050(1) ensures that the facility site can be restored to a useful, non-hazardous condition at the end of the facility's useful life. For the purpose of the standard, a "useful, non-hazardous condition" is a condition consistent with the applicable local comprehensive land use plan and land use regulations. All phases of the SWP are located on land zoned Exclusive Farm Use. To satisfy the standard, the applicants must show that the site can be restored to a non-hazardous condition suitable for agricultural use.

The certificate holders are obligated to retire the facility upon permanent cessation of construction or operation of the SWP. Under OAR 345-027-0020(9), before restoring the site, the certificate holder must submit a final retirement plan for approval by the Council. The Department's recommended Revision 23, discussed herein at page 140, would conform Condition 19 to Council rule OAR 345-027-0020(9), which is a mandatory condition. The retirement plan must describe the activities necessary to restore the site to a useful, non-hazardous condition. After Council approval of the plan, the certificate holder would obtain the necessary authorization from the appropriate regulatory agencies to proceed with restoration of the site. In addition, Condition 15 requires the certificate holder to maintain a bond or letter of credit to ensure that funds would be available to the Council to restore the site if the certificate holder does not retire the facility as required by OAR 345-027-0020(9). The Department's recommended Revision 21 would conform Condition 15 to Council rule OAR 345-027-0020(8), which is a mandatory condition. The Council confirms that Conditions 15 and 19 apply to Stateline 3.

Restoring the SWP site to a useful, non-hazardous condition upon retirement would involve dismantling all aboveground structures. Nacelles and rotors would be removed from the turbine towers, and the towers would be dismantled. Pad-mounted transformers and related aboveground equipment would be removed. Concrete tower foundations and

transformer pads would be removed to a minimum depth of three feet below grade. Gravel or crushed rock would be removed from adjacent turbine pad areas. The O&M building would be removed (or, at the request of the landowner, the building might be converted to farm use). The 230-kV transmission lines and support structures would be removed. Underground transmission lines and SCADA communication cables that are at least three feet below grade would be left in place. At a depth of three feet, underground components and foundations are not expected to interfere with farming practices.

All excavated areas would be backfilled with topsoil. The surface would be graded. The affected areas, including areas temporarily disturbed during site restoration activities, would be replanted with native plant seed mixes or agricultural crops, as appropriate, based on the use of surrounding lands. Demolition waste material would be transported for disposal at authorized sites.

For the purposes of the site restoration cost estimate, the Department assumes that facility access roads would be removed. Road areas would be restored with topsoil, graded and replanted with native plant seed mixes or agricultural crops, as appropriate. Access roads might be left in place based on landowner preference.

The facility would not have any underground storage tanks or other on-site bulk storage of hazardous materials. Small quantities of lubricants, vehicle fuel and herbicides might be transported over and across the site during operation, and leaks, spills and improper handling of these materials could occur. Given the small amounts of such materials used on the site, significant soil contamination is unlikely.[65]

The Council finds that the actions necessary to restore the site are feasible and that restoration of the site to a useful, non-hazardous condition could be achieved.

B. Site Restoration Costs

OAR 345-022-0050(2) addresses the possibility that the certificate holder is unable or unwilling to restore the site upon permanent cessation of construction or operation of the facility. For amendments to site certificates, OAR 345-027-0070(10)(d) requires the Council to consider whether the amount of a bond or letter of credit is adequate to ensure restoration for the facility with the changes allowed by the amendment. A bond or letter of credit provides a site restoration remedy to protect the State of Oregon and its citizens if the certificate holder fails to perform its obligation to restore the site under any circumstances. The bond or letter of credit must remain in force until the certificate holder has fully restored the site. To provide a fund that is adequate for the State to pay site restoration costs if the certificate holder fails to perform its obligation, the Council assumes circumstances under which the restoration cost would be highest.

Site Restoration Cost Estimate for Stateline 1&2

The applicants estimated that the current cost of site restoration for the Stateline 1&2 components of the SWP would be $5,311,946.[66] The applicants assumed that the scrap or

[65] The Department's site restoration estimate assumes that the cost of clean-up of any contamination from minor spills would be covered by the Future Developments Contingency adder.
[66] Revised Request for Amendment #4, Exhibit W, Appendix W-1, as corrected by the response to RAI W1.

salvage value of the turbines would be deducted from the cost of dismantling them.[67] The applicants' estimate did not identify line items for general costs (such as permits, mobilization, engineering, overhead and utility disconnects), project management or contingency, although these items may have been factored into the line item costs listed in the estimate.

The Department obtained an updated cost estimate, following the estimating procedure outlined in its draft "Facility Retirement Cost Estimating Guide" (Cost Guide). The Cost Guide was not available when the Council made findings on site restoration costs for Stateline 1 (in 2001) and Stateline 2 (in 2002). The Department's updated estimate is based on the actual configuration of Stateline 1&2. The assumptions underlying the Department's estimate are as follows:

- 186 Vestas 660-KW turbines and associated towers, wiring, blades, transformers and turnouts[68]
- 186 concrete foundations[69]
- 6 meteorological towers
- 103 junction boxes for the collector system.[70]
- 19 miles of access roads[71]
- Restoration of 196 acres of temporary disturbance[72]

The Department's updated estimate of the full cost of restoring land occupied by the Stateline 1&2 components of the SWP site is shown in Table 1.[73]

[67] The applicants assumed a salvage value of $50,000 per turbine, or a total of $9.3 million for the 186 Stateline 1&2 turbines (Revised Request for Amendment #4, Exhibit W, p. 4).
[68] The combined weight of the tower and nacelle for each Vestas V47 600-KW turbine is approximately 71 tons (email from Mike Pappalardo, February 5, 2009). Based on experience with other wind energy facilities, the estimate assumes that the area occupied by each turbine turnout is 55 square yards.
[69] Each containing 1,200 cubic feet of concrete to a depth of 3 feet below grade (email from Mike Pappalardo, February 5, 2009), converted to cubic yards and rounded up to 45 cubic yards.
[70] Email from Mike Pappalardo, February 5, 2009.
[71] See description above at page 8. The estimate is based on 20-foot access roads with 5-foot shoulders (*Final Order on the Application*, p. 11).
[72] See description above at page 8. The Department assumes that temporary disturbance during site restoration would be similar to temporary disturbance during construction.
[73] The Facility Retirement Cost Estimating Guide computes the retirement and site restoration cost in terms of mid-2004 dollars. The computation has been adjusted to reflect preliminary First Quarter 2009 dollars by application of a multiplier of 1.1377. The multiplier is generated by dividing the preliminary First Quarter 2009 annual Gross Domestic Product Implicit Price Deflator (GDP) of 124.5711 by the average of the Second Quarter 2004 GDP (109.185) and Third Quarter 2004 GDP (109.807).

Table 1: Stateline 1&2 Site Restoration Cost Estimate (1st Quarter 2009 Dollars)

Cost Estimate Component	Quantity	Unit Cost	Extension
Turbines and Towers			
Disconnect electrical and ready for disassembly (per tower)	186	$982	$182,652
Remove turbine blades and hubs (per tower)	186	$4,112	$764,832
Remove turbine nacelles and towers (per net ton of steel)	13,206	$92.90	$1,226,837
Transport and unload scrap (per net ton of steel)	13,206	$26.48	$349,695
Foundation and Pad Areas			
Remove and load pad transformers (per tower)	186	$2,430	$451,980
Remove turbine foundations (per cubic yard of concrete)	8,370	$35.24	$294,959
Restore turbine turnouts (per tower)	186	$102	$18,972
Met Towers			
Dismantle and dispose of met towers (per tower)	6	$7,811	$46,866
Collector System			
Remove junction boxes	103	$1,418	$146,054
Access Roads			
Road removal, grading and seeding (per mile)	19	$28,668	$544,692
Temporary Areas			
Restore areas disturbed during restoration work (per acre)	196	$2,978	$583,688
General Costs			
Permits, mobilization, engineering, overhead, utility disconnects			$471,573
Subtotal			**$5,082,800**
Performance Bond		1%	$50,828
Gross Cost			**$5,133,628**
Administration and Project Management		10%	$513,363
Future Developments Contingency		10%	$513,363
Full Cost			$6,160,354
Total Estimated Site Restoration Cost (rounded to nearest $1,000)			**$6,160,000**

The financial assurance amount currently in place for Stateline 1&2 is $2,058,472, based on information available in 2001.[74] As required under OAR 345-027-0070(10)(d), the Council must determine whether the amount of the financial assurance currently in place is adequate to ensure restoration of the site of the Stateline 1&2 components. The Department compared the estimates made in 2001 (for Stateline 1) and 2002 (for Stateline 2) with the estimate shown in Table 1 and the new estimate provided by the applicants in the amendment request.[75] The major differences are summarized below in Table 2.[76]

[74] This amount is the sum of the amounts required by Conditions 80 and 102, adjusted to 4th Quarter, 2008 dollars.

[75] Revised Request for Amendment #1, Exhibit W, Appendix W-1.

[76] Dollars are comparable. The 2001/2002 Estimate shows costs adjusted as of the 4th Quarter, 2008. The Updated Estimate shows costs adjusted as of the 1st Quarter, 2009. The applicants' estimate is dated October 7, 2008.

Table 2: Comparison of Site Restoration Estimates (Stateline 1&2)

Cost Estimate Component	2001/2002 Estimate	Applicants' Estimate	Updated Estimate
Turbines and Towers Dismantle and remove turbines and towers (net costs after deduction for scrap or salvage value)	$0	$3,682,800	$2,524,016[77]
Foundations and Pad Areas	$1,297,321	$1,169,382	$765,911
Met Towers	$0	$207,000	$46,866
Remove junction boxes	$0	$0	$146,054
Access Roads	$334,236	$252,764	$544,692
Temporary Areas	$83,837	$0	$583,688
General Costs	$0	$0	$471,573
Performance Bond	$0	$0	$50,828
Administration and Project Management	$0	$0	$513,363
Future Developments Contingency	$343,079	$0	$513,363
Total estimated site restoration cost	**$2,058,473**	**$5,311,946**	**$6,160,354**

The Department's updated estimate does not include any deduction for scrap or salvage value. The applicants' estimate is the net cost after removing an estimated $9.3 million salvage value. The 2001/2002 estimate assumed that the salvage value of the turbines would entirely offset the dismantling costs. This assumption can now be seen as incorrect, based on current information. The financial assurance amount currently in place is significantly less than the new estimates by the Department and the applicants. The most significant difference between the 2001/2002 estimate and the current estimates is the net cost associated with dismantling and removal of the turbine towers.

Scrap-Value Offset

In 2001, the applicant estimated that the dismantling and removal costs for the Stateline 1 turbines and turbine towers would be $17,500 per turbine (December 2000 dollars) based on a demolition contractor's bid.[78] The contractor estimated that the salvage value of the turbines and towers would be equal to the cost of dismantling and removing them. Based on this information (but without considering the future variability in scrap or salvage value), the Council, at that time, found that it was reasonable to assume that the scrap or salvage value of the turbines and towers would be equal to, but not more than, the cost of dismantling and removing them. The Council applied this finding to the site restoration costs for Stateline 1 and Stateline 2.[79]

In 2006, as a result of concerns expressed by Council members, the Department conducted an internal review of the risks involved in allowing a deduction for scrap or salvage value in calculating the financial assurance amount. The Department concluded that there was a significant risk that third party creditors or other parties could assert a claim against the scrap or salvage value that might result in that value being unavailable to the State to offset site restoration costs. At a public Council meeting on February 2, 2007, the Council discussed the issue and considered comments from facility developers. During the discussion, several

[77] Assuming no offset for scrap or salvage value.
[78] Site Certificate Application for the Stateline Wind Project, Exhibit W, Attachment W-1.
[79] *Final Order for the Stateline Wind Project* (September 14, 2001), p. 16, and *Final Order on Amendment #1* (May 17, 2002), pp. 16-17.

Council members expressed the opinion that there should be no deduction of scrap or salvage value in calculating the amount of financial assurance required for site restoration. The Council did not take any formal action on the matter. In subsequent site certificate and amendment proceedings, however, the Council has not allowed a deduction for the scrap or salvage value of turbines and towers in its findings on site restoration costs for wind energy facilities.

As shown in Table 2, the applicants estimated that the cost for Stateline 1&2 site restoration would be approximately $5.3 million, which is significantly higher than 2001/2002 estimates that are the basis for the value of the financial assurance currently in place under Conditions 80 and 102. Nevertheless, the applicants are "satisfied with the conditions as they are now written and imposed" and believe that "higher bond amounts on Stateline 1 and Stateline 2 are quite onerous because these two phases have already been financed and constructed."[80]

In a supplemental statement on the issue of financial assurance, the applicants emphasize that "project lenders advanced the funds necessary for FPL Energy Vansycle, LLC, to finance and develop each phase based on the site-restoration bond amounts specified by the Council for each of Phases 1 and 2."[81] The applicants state that a significant increase in the financial assurance obligation would create a hardship because "the lenders will not consent to any retroactive increase in the amount of the site restoration bond required for project phases already constructed" and the lenders' consent is required for FPL Stateline to proceed with development of Stateline 3. Consequently, the cost of the increase in the financial assurance for Stateline 1&2 would have to be borne by FPL Stateline "as an additional cost of Stateline 3."

The Department received additional comments from Umatilla County regarding the financial assurance issue.[82] Tamra Mabbott, the Umatilla County Planning Director, expressed concern that an increase in the financial assurance amount for the Stateline project "would create a competitive disadvantage for Stateline and other projects subject to EFSC jurisdiction in relation to smaller, subjurisdictional projects." Although the County shares the Council's concerns and supports conditions that will ensure site restoration, the Planning Director commented that it would be "appropriate for EFSC to recognize salvage values in calculating the amount of the bond required to cover the cost of restoration to offset part of the bond amount."

In response to these concerns, the Department recommended that the Council allow a limited offset of the financial assurance amount for Stateline 1&2 as described below. Steel and other metals in the turbines and turbine towers are reasonably expected to have value in the future, either as salvage (for re-use at another site) or as scrap metal. To be conservative, the Council may assume that towers and nacelles would have a lower value as scrap and base any offset on the estimated scrap value rather than the estimated salvage value. In the absence of a third-party claim, the scrap value would be available to the Council to offset the dismantling and removal costs at the time of facility retirement.

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[80] Revised Request for Amendment #4, pp. 4-5.
[81] Co-Applicants' Supplemental Statement Concerning the Appropriate Amount of Site-Restoration Bonds for Stateline Phase 1, 2 and 3, January 26, 2009.
[82] Letter from Tamra Mabbott, Umatilla County Planning Director, January 23, 2009.

If there were a third party having a security interest or other legal claim against the turbines or turbine towers, such party might assert its claim at the time of site restoration. The orderly procedure for asserting the claim would be for the third party to participate in the Council process described in OAR 345-027-0110 for the termination of the site certificate. Assuming the claim were determined to be valid, the final retirement plan for site restoration could provide for delivery of the scrap to the third party, less the cost of dismantling the turbines and removing them from the site. The third party would recover the net value after sale of the scrap, and the costs of dismantling and removing the turbines would be paid.

To ensure disclosure of potential third-party claims, the Council adopts new Condition 136, as discussed in Revision 90 at page 173. The condition would require the certificate holder to notify interested third parties that the turbines and turbine towers are subject to the requirements of the Site Certificate and Council rules with regard to facility retirement and would require the certificate holder to provide the Department with names and contact information for all such third parties.

The financial assurance amount for Stateline 1&2 may reasonably allow for an offset based on the estimated scrap value of the turbines and turbine towers so long as the offset amount does not exceed the dismantling and removal costs. That limitation would ensure that the financial assurance amount is sufficient to cover all other estimated costs of site retirement (as detailed in Table 1). If the actual scrap value at the time of site restoration exceeds the dismantling and removal costs, the excess amount could potentially be subject to a third party claim. Accordingly, the Department recommended that the offset be "capped" at the estimated cost of turbine dismantling and removal (adjusted annually for inflation). The estimated dismantling and removal costs are the sum of the line items under the "Turbines and Towers" section of Table 1.

The future scrap value of steel can be estimated and adjusted on an annual basis to account for fluctuations in the commodity market.[83] The Council has previously approved a method of scrap value estimation and annual adjustment.[84] The Department recommended that the Council apply a similar methodology for estimating the scrap value of the Stateline 1&2 turbines and turbine towers. The U.S. Bureau of Labor Statistics publishes the Producer Price Index (PPI) for industrial commodities, including "carbon steel scrap." The Department recommended using the annual index values, because month-to-month values vary seasonally. Annual index values, therefore, provide the best estimate possible, given a highly volatile commodity market.

In 2006, a consultant to the Department surveyed actual scrap steel prices in the Portland market and found the average price to be $145 per ton. The Department calculates that the current value of scrap steel at Portland is approximately $166 per ton, based on the market price adjusted by the PPI.[85] There are approximately 13,206 tons of steel in the 186

[83] Steel is the largest component by weight of the potential scrap metals and serves as a proxy for all valuable metals in the Department's estimate.
[84] *Final Order on the Application for the Klondike III Wind Project* (June 30, 2006), pp. 18-19; *Final Order on the Application for the Biglow Canyon Wind Farm* (June 30, 2006), pp. 19-27.
[85] The calculation uses the PPI value for 2006 (annual, non-seasonally adjusted) and the PPI value for 2007, which is the most recent full year for which final published data are available, resulting in an adjustment multiplier of 1.148172.

turbine towers and nacelles that are part of the Stateline 1&2 components. The estimated total scrap value (currently) is $2,198,599 (rounded to the nearest dollar). This estimated scrap value does not exceed the estimated turbine dismantling and removal costs ($2,524,016) shown under the "Turbines and Towers" section in Table 1. Accordingly, the recommended offset would be $2,198,599 and would reduce the updated financial assurance amount for Stateline 1&2 to $3,962,000 (1st Quarter 2009 dollars, rounded to nearest $1,000).

In Revision 49 at page 153, the Department recommends modification of Condition 80 to consolidate the financial assurance amount for Stateline 1&2. In Alternative A, the modification incorporates the revised site restoration cost estimate shown in Table 1. Alternative A includes the recommended offset and the recommended method of annual adjustment. In Alternative B, the modification incorporates the revised site restoration cost estimate shown in Table 1 but does not allow an offset. The Council's decision whether to adopt Alternative A (concurring with the Department's recommendation) or Alternative B (rejecting the recommendation and not allowing an offset) is indicated on page 174 of this order.

The applicants proposed a "retirement sinking fund" as an alternative "practical solution that moderates the adverse effects of site-restoration bonds on certificate holders."[86] The applicants proposed to insert language in Conditions 80, 102 and 109 that would reduce the financial assurance amount otherwise required by each of these conditions by 25 percent if the certificate holder "maintains, or has maintained on its behalf, a dedicated Stateline [1, 2 or 3] retirement sinking fund in an amount of at least $1,000,000." The applicants did not explain the "retirement sinking fund" concept in any detail in the amendment request. There is no discussion in Exhibit M (Applicants' Financial Capability) or Exhibit W (Facility Retirement and Site Restoration) describing how the fund would be maintained or how the fund would provide financial assurance to the Council. Because the form of financial assurance is limited by OAR 345-027-0020(8) to "a bond or letter of credit," the Council declines to modify the financial assurance conditions of the Site Certificate to incorporate a "retirement sinking fund" as proposed by the applicants.

Site Restoration Cost Estimate for Stateline 3

The applicants estimated that the cost of site restoration for the Stateline 3 components of the SWP would be $2,943,320 (if 43 2.3-MW turbines are built) or $3,897,543 (if 67 1.5-MW turbines are built).[87] The applicants assumed that the scrap or salvage value of the turbines would be deducted from the cost of dismantling them.[88] The applicants' estimate did not identify line items for general costs (such as permits, mobilization, engineering, overhead and utility disconnects), project management or contingency, although these items may have been factored into the line item costs listed in the estimate.

In Amendment #4, the applicants request the flexibility to build Stateline 3 with either 1.5-MW wind turbines or 2.3-MW wind turbines. The number of turbines and the final layout of the Stateline 3 components will be determined by the selection of turbine type. The Department has determined that a configuration that uses the greater number of turbines

[86] Revised Request for Amendment #4, p. 5.
[87] Revised Request for Amendment #4, Exhibit W, Appendix W-1.
[88] The applicants assumed a salvage value of $50,000 per turbine, or a total of $3.35 million if Stateline 3 has 67 turbines or $2.15 million if Stateline 3 has 43 turbines (Revised Request for Amendment #4, Exhibit W, p. 4).

would result in the highest cost for site restoration. The cost estimate for Stateline 3 is based on the 67-turbine configuration, consistent with the Council's practice of assuming circumstances under which the restoration cost would be highest and consistent with the maximum design flexibility requested by the applicants. The assumptions underlying the Department's estimate are as follows:

- 67 1.5-MW GE turbines and associated towers, wiring, blades, transformers, and turnouts[89]
- 67 concrete foundations[90]
- 16 miles of aboveground single-circuit 230-kV transmission line[91]
- 9 junction boxes for the underground 34.5-kV collector system[92]
- 23 miles of new access roads[93]
- Substation
- O&M facility
- Restoration of 321 acres of temporary disturbance[94]

The Department's estimate of the full cost of restoring the land occupied by the proposed Stateline 3 components of the SWP is shown Table 3.

Table 3: Stateline 3 Site Restoration Cost Estimate (1st Quarter 2009 Dollars)

Cost Estimate Component	Quantity	Unit Cost	Extension
Turbines and Towers			
Disconnect electrical and ready for disassembly (per tower)	67	$1,051	$70,417
Remove turbine blades and hubs (per tower)	67	$4,112	$275,504
Remove turbine nacelles and towers (per net ton of steel)	15,142	$78.45	$1,187,890
Transport and unload scrap (per net ton of steel)	15,142	$26.48	$400,960
Foundation and Pad Areas			
Remove and load pad transformers (per tower)	67	$2,430	$162,810
Remove turbine foundations (per cubic yard of concrete)	17,152	$35.24	$604,436
Restore turbine turnouts (per tower)	67	$102	$6,834
Substation			
Dismantle and dispose of substation (per unit)	1	$58,635	$58,635
Met Towers			
Dismantle and dispose of met towers (per tower)	2	$7,816	$15,632

[89] The combined weight of the tower and nacelle for each GE 1.5-MW SLE turbine is approximately 71 tons (email from Mike Pappalardo, February 5, 2009). Based on experience with other wind energy facilities, the estimate assumes that the area occupied by each turbine turnout is 55 square yards.
[90] Each containing 6,912 cubic feet of concrete to a depth of 3 feet below grade (email from Mike Pappalardo, February 5, 2009), converted to cubic yards.
[91] Including approximately 3.1 miles of transmission line in Washington. The estimate assumes that transmission line towers are spaced 570 feet apart (9 towers per mile).
[92] Response to RAI B8.
[93] Assumes 23 miles of new 16-foot access roads (*See* Request for Fourth Amended Site Certificate, Exhibit B, page B-2, and Response to RAI, Exhibit B, p. 2).
[94] Based on estimated temporary construction disturbance (Response to RAI, Exhibit P, Table P-3). The Department assumes that temporary disturbance during site restoration would be similar to temporary disturbance during construction.

Collector System			
Remove junction boxes	9	$1,418	$12,762
O&M Facility			
Dismantle and dispose of O&M facility (per unit)	1	$12,726	$12,726
Transmission Line			
Remove 230-kV transmission line (per mile)	13	$18,261	$237,393
Access Roads			
Road removal, grading and seeding (per mile)	23	$17,547	$403,581
Temporary Areas			
Restore areas disturbed during restoration work (per acre)	321	$2,978	$955,938
General Costs			
Permits, mobilization, engineering, overhead, utility disconnects			$471,572
Subtotal			**$4,877,091**
Performance Bond		1%	$48,771
Gross Cost			**$4,925,862**
Administration and Project Management		10%	$492,586
Future Developments Contingency		10%	$492,586
Full Cost			$5,911,034
Total Site Restoration Cost (rounded to nearest $1,000)			**$5,911,000**

For the reasons discussed above with respect to Stateline 1&2, the Department recommended that the Council allow a limited scrap-value offset of the financial assurance amount for Stateline 3. The Department recommended that the offset not exceed the estimated cost of dismantling and transportation.

There are approximately 15,142 tons of steel in the 67 turbine towers and nacelles that are part of the Stateline 3 components, based on the assumptions underlying the cost estimate shown in Table 3. The estimated total scrap value is $2,520,914.[95] This estimated scrap value exceeds the estimated turbine dismantling and removal costs ($1,934,771) shown under the "Turbines and Towers" section in Table 3. Accordingly, the recommended offset would be $1,934,771 and would reduce the financial assurance amount for Stateline 3 to $3,976,000 (1st Quarter 2009 dollars, rounded to nearest $1,000).

In Revision 66 at page 162, the Department recommends modification of Condition 109, which establishes the financial assurance amount for Stateline 3. In Alternative A, the modification incorporates the site restoration cost estimate shown in Table 3. Alternative A includes the recommended offset and the recommended method of annual adjustment. In Alternative B, the modification incorporates the site restoration cost estimate shown in Table 3 but does not allow an offset. The Council's decision whether to adopt Alternative A (concurring with the Department's recommendation) or Alternative B (rejecting the recommendation and not allowing an offset) is indicated on page 174 of this order.

C. Ability of the Applicants to Obtain a Bond or Letter of Credit

OAR 345-022-0050(2) requires the Council to decide whether the applicant has a reasonable likelihood of obtaining a bond or letter of credit, in a form and amount satisfactory to the Council, to restore the site to a useful, non-hazardous condition. The applicants have proposed dividing the financial assurance requirement for the SWP facility so that FPL Vansycle would provide a bond or letter of credit for Stateline 1&2 and FPL Stateline would

[95] PPI-adjusted value for 2007, calculated as discussed above for Stateline 1&2.

provide a bond or letter of credit for Stateline 3. To accommodate the applicants' request, the Department has prepared the separate estimates discussed above.

The Department recommends financial assurance of $3.962 million (1st Quarter, 2009 dollars) for Stateline 1&2 as reflected in revised Condition 80, Alternative A. The Department recommends financial assurance of $3.976 million (1st Quarter, 2009 dollars) for Stateline 3, or an amount based on the final design configuration, as reflected in revised Condition 109, Alternative A. Based on these recommendations, the combined total for the SWP as a whole would be $7.938 million (1st Quarter, 2009 dollars). If the Council declines to allow the limited scrap-value offset, the combined total for the SWP as a whole would be $12.071 million (1st Quarter, 2009 dollars), based on revised Condition 80, Alternative B, and revised Condition 109, Alternative B.

FPL Vansycle has provided a bond in the amount of $2,058,472 (Bond No. 08954580) issued by Fidelity and Deposit Company of Maryland to meet the current financial assurance requirements for Stateline 1 and Stateline 2, prior to this amendment.

In the amendment request, FPL Vansycle and FPL Stateline provided information about their ability to obtain financial assurance for restoration of the SWP site. The applicants have provided a letter from Fidelity and Deposit Company of Maryland (FDCM) stating that FCDM agrees "to provide Suretyship on behalf of FPL Energy Vansycle, LLC and FPL Energy Stateline II, Inc. covering contracts in the amount of $10,000,000.00 for any single contract and $25,000,000.00 in the aggregate of outstanding contracts."[96]

It is customary for a performance bond to contain provisions allowing the surety to complete construction of a project in order to reduce its potential liability. Oregon law and Council rules require a site certificate to construct or operate an energy facility.[97] Accordingly, when the certificate holder elects to use a bond to meet the financial assurance requirements and the surety retains the right to complete construction, operate or retire the energy facility, the Council requires the certificate holder to ensure that the surety has agreed to comply with all applicable statutes, Council rules and site certificate conditions. In addition, the Council requires that the surety seek Council approval before commencing construction, operation or retirement activities. Revision 37 would modify Condition 41 to require that any bonds obtained for Stateline 1&2 and Stateline 3, as required under revised Conditions 80 and 109, are subject to these requirements.

Conclusions of Law

For the reasons discussed above and subject to the recommended conditions and revisions, the Council finds that the SWP site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facilities. The Council's findings regarding a reasonable estimate of the cost to restore Stateline 1&2 to a useful, non-hazardous condition (Condition 80) and a reasonable estimate of the cost to restore Stateline 3 to a useful, non-hazardous condition (Condition 109) are stated on page 174 of this order. The Council finds that FPL Vansycle and FPL Stateline have demonstrated a reasonable likelihood of obtaining bonds or letters or credit, satisfactory to the Council, in combined amounts adequate to restore the site

[96] Response to RAI, Attachment 4.
[97] ORS 469.320(1); OAR 345-027-0100(1).

to a useful, non-hazardous condition. Based on these findings and the conditions discussed herein, the Council concludes that the applicants would meet the Council's Retirement and Financial Assurance Standard if Amendment #4 were approved.

3. Standards about the Impacts of Construction and Operation

(a) Land Use

OAR 345-022-0030

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

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

***

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

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

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

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

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

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

(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; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

* * *

Findings of Fact

In the Final Order on the Application, the Council found that Stateline 1 complied with the applicable substantive criteria recommended to the Council by Umatilla County. The criteria included Umatilla County Development Code (UCDC) Sections 152.060, 152.061, 152.616 and 152.615 and Umatilla County Comprehensive Plan (UCCP) elements on Energy Conservation, on Open Space, Scenic and Historic Areas and on Natural Resources. In addition to these criteria, the Council applied OAR 660-033-0120 and OAR 660-033-0130 because these State land use regulations were found to be directly applicable.[98] The Council found that the facility did not comply with OAR 660-033-0130(22) but that an exception to the applicable statewide planning goal (Goal 3 – Agricultural Lands) was justified.

In the Final Order on Amendment #1, the Council found that Stateline 2 complied with the applicable substantive criteria of Umatilla County and with all directly applicable provisions of the LCDC administrative rules.[99] In the Final Order on Amendment #2, the

[98] Under ORS 469.504(1)(b)(A), the facility must also comply with Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3), which makes a new or amended goal, rule or statute directly applicable to the local government's land use decisions if the local government has not yet amended its comprehensive plan and land use regulations to implement the new provision.

[99] The Council's findings regarding Stateline 2 and the previous Stateline 3 configuration were based in part on the reasoning that the facility access roads were not part of the principal use and that the area occupied by access roads would, therefore, not be included in determining whether an exception was required under OAR 330-033-0130(22) (under which an exception is needed for approval if a "power generation facility" precludes more than 20 acres from use as a commercial agricultural enterprise). In subsequent findings, however, the Council has found that wind facility access roads, although not part of the principal use, must nevertheless meet the same requirements as the principal use (see, for example, *Final Order on the Application for the Klondike III Wind Project*, June 30, 2006, pp. 40-41). The area occupied by access roads is included when determining whether the facility precludes more than 20 acres from agricultural use.

Council found that Stateline 3 (as described in the Request for Amendment #2) complied with the applicable substantive criteria of Umatilla County and with all directly applicable provisions of the Land Conservation and Development Commission (LCDC) administrative rules.

Under OAR 345-027-0070(10)(a), the Council must consider whether the facility complies the Land Use Standard for the areas that would be affected by construction and operation of Stateline 3. The proposed Stateline 3 would lie on land within the land use jurisdiction of Umatilla County. Like the previous phases of the SWP, the proposed new Stateline 3 configuration is located on privately owned land zoned Exclusive Farm Use (EFU).

The Council must apply the Land Use Standard in conformance with the requirements of ORS 469.504. The Oregon Supreme Court recently held "under ORS 469.504(1)(b) and (5), the council may choose to determine compliance with statewide planning goals by evaluating a facility under paragraph (A) or (B) or (C), but … it may not combine elements or methods from more than one paragraph, except to the extent that the chosen paragraph itself permits."[100]

The Council may find compliance with statewide planning goals under ORS 469.504(1)(b)(A) if the Council finds that the proposed facility "complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted." In this case, Umatilla County is the "affected local government."

The land use analysis begins with identification of the "applicable substantive criteria" recommended by the Special Advisory Group (SAG). The Council appointed the Board of Commissioners of Umatilla County as the SAG on July 28, 2000, during the review of the site certificate application. In its Request for Comments on the Request for Amendment (dated November 5, 2008), the Department requested that the County identify the applicable regulations. The Department later clarified that the Department was requesting that the SAG identify the applicable substantive criteria.[101]

Under ORS 469.504(5), "If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group." Carol Johnson of the Umatilla County Planning Department responded to the Department's request and identified the applicable substantive criteria.[102]

If the Council finds that a proposed facility does not comply with one or more of the applicable substantive criteria, then the Council must proceed under ORS 469.504(1)(b)(B) and must determine whether the proposed facility "otherwise [complies] with the applicable statewide planning goals." In *Save Our Rural Oregon*, the Court held that "paragraph (B) necessarily requires an evaluation of the same applicable substantive criteria as paragraph (A)

[100] *Save Our Rural Oregon v Energy Facility Siting Council*, 339 Or 353 (2005).
[101] Email from John White, December 3, 2008.
[102] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.

and, to the extent those criteria are not met, directs the council to consider statewide planning goals."

ORS 469.504(1)(b)(C) is not available to the Council, because subsection (5) of the statute does not allow the Council to elect to apply the statewide planning goals directly when, as in this case, the special advisory group has recommended applicable substantive criteria for a proposed facility.

For the reasons discussed below, the Council finds that the proposed expansion of the SWP (Stateline 3) does not comply with all of the applicable substantive criteria. The Council finds that Goal 3 (Agricultural Lands) is the applicable statewide planning goal. The Council finds that Stateline 3 complies with Goal 3 and, if applicable to this review, OAR 666-033-0130(37), which is an implementing State land use regulation under Goal 3. The Council finds, if OAR 660-033-0130(37) is inapplicable or if Stateline 3 were found not to comply with OAR 660-033-0130(37), an exception to Goal 3 is justified for the reasons discussed at page 77.

A. Umatilla County's Applicable Substantive Criteria

Umatilla County Development Code (UCDC) Section 152.060 lists land uses that "may be permitted conditionally via administrative review" (conditional uses) in the County's EFU zone. A "commercial utility facility for the purpose of generating power for public use by sale" (and specifically a "wind power generation" facility) is an allowable use, subject to conditional use standards in UCDC Sections 152.610 through 152.617.[103] UCDC Section 152.003 defines a "wind power generation facility" as follows:

> ***WIND POWER GENERATION FACILITY.*** *An energy facility that consists of one or more wind turbines or other such devices and their related or supporting facilities that produce electric power from wind and are: (a) Connected to a common switching station, or (b) Constructed, maintained, or operated as a contiguous group of devices.*

The SWP, including its related or supporting facilities, is a wind power generation facility under this definition, and Stateline 3 would be an expansion of that facility. UCDC Section 152.616(HHH) contains specific standards applicable to wind power generation facilities. In addition, the County identified UCDC Sections 152.061 and 152.063 (C), (E) and (F), 152.010, 152.011, 152.016, 152.017, 152.018 and 152.545 through 152.562 as applicable to wind power generation facilities.

A transmission line with towers less than 200 feet in height is allowed in the EFU zone by administrative review. Such a transmission line is a "utility facility necessary for public service" under UCDC Section 152.059(C). The County identified UCDC Section 152.617(II)(7) as applicable to the transmission line and stated that UCDC Sections 152.010, 152.011, 152.016, 152.017, 152.018 and 152.545 through 152.562 "also may apply."[104]

In addition, the County identified UCDC Sections 152.061, 152.615 and 152.617(I)(K)(2), (8) and (10) as applicable to the proposed temporary concrete batch plant to

[103] UCDC Section 152.060(F).
[104] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.

be located within the disturbed lands of an existing gravel quarry.[105] As an alternative site for the batch plant, the applicants have proposed locating it within the 30-acre laydown area where the O&M facility and substation would also be built.[106] If the batch plant is located there, then UCDC Sections 152.061, 152.615 and 152.617(I)(A) would apply.

The County listed policies in the Umatilla County Comprehensive Plan (UCCP) as applicable local approval standards. Specifically, the County identified the following policies:

Citizen Involvement: Policy 1 and Policy 5
Agriculture: Policies 1, 8 and 17
Open Space, Scenic and Historic Areas, and Natural Resources: Policies l(a), 5(a and b), 6(a), 8(a), 9(a), 10(c, d and e), 20(a), 20(b)(1-8), 22, 23(a), 24(a), 26, 37, 38(a-c), 39(a) and 42(a)
Air, Land and Water Quality: Policies, 1, 7 and 8
Natural Hazards: Policies 1 and 4
Recreational Needs: Policy 1
Economy of the County: Policies 1, 4 and 8(a-f)
Public Facilities and Services: Policies l(a-d), 2, 9 and 19
Transportation: Policy 20
Energy Conservation: Policy 1

In addition, the County noted that a Zoning Permit is required before construction of structures in the County.

UCDC Section 152.010

UCDC Section 152.010 addresses access to buildings and structures. The proposed Stateline 3 O&M building is a "building" and all other aboveground components of the proposed Stateline 3 expansion are "structures" under the definitions in UCDC Section 152.003. The ordinance requires that buildings be constructed "on a lot that abuts a public street or a recorded easement" and requires structures to be "located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking."

UCDC Section 152.010 also addresses "private driveways and easements that enter onto a public or county road or state or federal highway." The ordinance requires construction of such driveways and easements to be "of at least similar if not the same material as the public or county road or state or federal highway to protect the edge of the road from rapid deterioration" and requires such improvements to extend at least 25 feet back from the edge of the existing travel lane surface.

In UCDC Section 152.010, the County has established facility design requirements that may be outside the Council's jurisdiction under ORS 469.401(4). Nevertheless, the County has identified the ordinance as one of the applicable substantive criteria under ORS 469.504(5) for the wind power generation facility and the transmission line. In Revision 77, the Department recommends that the Council adopt Condition 123, which would require the certificate holder to design and construct Stateline 3 in compliance with the County design requirements as described in this ordinance. In addition, Condition 2 requires the certificate holder to design and construct the facility "in compliance with the requirements

[105] Email from Carol Johnson, Umatilla County Planning Department, January 29, 2009.
[106] Response to RAI, Exhibit C, pp. 2-3, and response to RAI G2.

of…ordinances in effect at the time the site certificate is issued." Condition 2 incorporates the mandatory condition required by OAR 345-027-0020(3).

UCDC Section 152.011

UCDC Section 152.011 addresses "vision clearance" areas that apply to intersections of two streets or a street and a railroad and precludes "any planting, wall, structure, or obstruction of any kind exceeding two and one-half feet in height measured from the grade of the street centerline" within the vision clearance area. For an agricultural zone, the vision clearance distance is 30 feet back from the intersection.

In UCDC Section 152.011, the County has established a facility design requirement that may be outside the Council's jurisdiction under ORS 469.401(4). Nevertheless, the County has identified the ordinance as one of the applicable substantive criteria under ORS 469.504(5) for the wind power generation facility and the transmission line. In Revision 77, the Department recommends that the Council adopt Condition 123, which would require the certificate holder to design and construct Stateline 3 in compliance with the County design requirements as described in this ordinance. In addition, Condition 2 requires the certificate holder to design and construct the facility "in compliance with the requirements of…ordinances in effect at the time the site certificate is issued." Condition 2 incorporates the mandatory condition required by OAR 345-027-0020(3).

UCDC Section 152.016

UCDC Section 152.016 addresses standards for maintenance, removal and replacement of riparian vegetation along streams, lakes and wetlands. In addition, the ordinance requires minor drainage improvements on surrounding agricultural lands to be "coordinated with the Oregon Department of Fish and Wildlife and Soil and Water Conservation District."

The applicants have identified streams and wetlands within the site boundary of the Stateline 3 expansion in Exhibit J.[107] Potential impacts to State jurisdictional waters and wetlands are discussed below at page 123. There are approximately 2 acres of riparian habitat within the Stateline 3 site boundary, none of which would be disturbed by construction of Stateline 3.[108] Restoration of the temporarily disturbed areas, mitigation for the permanent habitat impacts and recommended site certificate conditions regarding habitat disturbance are discussed below, beginning at page 105. Proposed plans for mitigation of temporary and permanent habitat disturbances were developed in consultation with ODFW.

UDCD Section 152.017

UCDC Section 152.017 addresses the public transportation system and conditions applicable to development proposals that are likely to generate a significant increase in trip generation. UCDC Section 152.003 defines a "significant change in trip generation." Increased traffic resulting from construction and operation of the proposed Stateline 3 components is discussed below at page 116. Construction of Stateline 3 would result in a temporary increase in vehicle traffic to and from the facility site that would be considered significant under the ordinance, but there would be no significant change in trip generation

[107] Revised Request for Amendment #4, Exhibit J.
[108] Response to RAI, Exhibit P, Tables P-3 and P-4.

during facility operation.[109] For a development that is likely to generate a significant increase in trip generation, the ordinance requires "adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding system." In Exhibit U, the applicants have provided information on the estimated traffic impact of the proposed facility. The ordinance provides for mitigation of the traffic impacts attributable to the project. Condition 45 requires the certificate holder to restore any County roads that are degraded by construction traffic. Condition 77 requires the certificate holder to implement traffic safety measures during construction. The Council confirms that Conditions 45 and 77 apply to Stateline 3.

UCDC Section 152.018

UCDC Section 152.018 addresses measures to "manage access to land development while preserving the flow of traffic in terms of safety, capacity, functional classification, and level of service." The ordinance describes the categorization of roadways in the County's Transportation System Plan. The ordinance implements access management policies for properties that abut "arterials and collectors within the County," including specific provisions for corner clearance, joint use driveways and cross access easements and design of driveways and access connections.

In UCDC Section 152.018, the County has established facility design requirements that may be outside the Council's jurisdiction under ORS 469.401(4). Nevertheless, the County has identified the ordinance as one of the applicable substantive criteria under ORS 469.504(5) for the Stateline 3 wind power generation facility and the transmission line. In Revision 77, the Department recommends that the Council adopt Condition 123, which would require the certificate holder to design and construct Stateline 3 in compliance with the County design requirements as described in this ordinance. In addition, Condition 2 requires the certificate holder to design and construct the facility "in compliance with the requirements of…ordinances in effect at the time the site certificate is issued." Condition 2 incorporates the mandatory condition required by OAR 345-027-0020(3).

UCDC Section 152.061

> *The following limitations shall apply to all conditional uses in an EFU zone. Uses may be approved only where such uses:*
>
> *(A) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
>
> *(B) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.*

UCDC Section 152.061 provides for protection of accepted farm and forest practices. The ordinance applies to conditional uses, including a wind generation facility. This ordinance also applies to the temporary batch plant, whether it is located within the existing County-approved quarry site or within the 30-acre laydown area. Provisions similar to UCDC Section 152.061 are found in the land use ordinances of other counties where the Council has

[109] Assuming conservatively that all of the construction truck trips described in Exhibit U involve vehicles having a Gross Vehicle Weight greater than 10,000 pounds, construction traffic would be a "significant" change for graveled and paved County roads, under the definition in UCDC Section 152.003.

approved site certificates for wind energy facilities and in State land use regulations.[110] The Council has previously found that wind energy facilities on farm land in other counties do not force a significant change in accepted farm practices on surrounding lands devoted to farm use and do not significantly increase the cost of such farm practices.[111]

In the Final Order on the Application, the Council found that Stateline 1 would comply with *former* UCDC Section 152.061, which addressed the same issue of protection of accepted farm practices as addressed by the current ordinance.[112] In the Final Order on Amendment #1, the Council made similar findings as to *former* UCDC Section 152.061 regarding Stateline 2, and in the Final Order on Amendment #2, the Council made similar findings as to *former* UCDC Section 152.061 regarding the old Stateline 3 configuration.[113]

The analysis area for Stateline 3 (the area within the site boundary and one-half mile from the site boundary) contains approximately 21,305 acres in Umatilla County, all of which is used for agricultural purposes.[114] At most, as shown in Table 8 herein, the Stateline 3 wind generation facility would occupy approximately 59 acres of this farm-use land, or less than one percent.

Accepted farm practices in the area are those necessary for dryland wheat farming, which is the predominant agricultural use, but other land is used for grazing and some land is enrolled in the Conservation Reserve Program (CRP).[115] There is no forest use within the analysis area. The Council finds that the impact of the proposed Stateline 3 would not force a significant change in accepted farm practices or significantly increase the cost of farm practices, for the reasons discussed below.

The temporary batch plant would be dismantled and removed when construction of Stateline 3 is completed. If the batch plant is located within the quarry site, it would have no new land impacts that were not considered by the County in approving the quarry. If the batch plant is located within the Stateline 3 laydown area, then it would have a temporary impact on agricultural land.[116] The land affected by the batch plant would either be restored to agricultural uses upon completion of construction or it would be part of the permanent 10-acre site containing the Stateline 3 O&M building and substation. The temporary and permanent impacts of the laydown area (as a related or supporting component of the wind energy facility) are addressed by the discussion below.

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[110] The language of the ordinance is substantially the same as Land Conservation and Development Department administrative rule OAR 660-033-0130(5).

[111] Recent examples include the *Final Order on the Leaning Juniper II Wind Power Facility* (September 21, 2007), pp. 36-38, and the *Final Order on the Shepherds Flat Wind Farm* (July 25, 2008), pp. 30-32 and p. 42.

[112] *Final Order for the Stateline Wind Project* (September 14, 2001), pp. 22-24. Former UCDC Section 152.061(B) imposed the limitation that a conditional use: *"Does not interfere seriously with accepted farming practices as defined in O.R.S. 215.203(2)(c) on adjacent lands devoted to farm uses, nor interfere with other resource operations and practices on adjacent lands, and will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."*

[113] *Final Order on Amendment #1* (May 17, 2002), pp. 21-22; *Final Order on Amendment #2* (June 6, 2003), pp. 35-39.

[114] Response to RAI K1.

[115] Revised Request for Amendment #4, Exhibit K, pp. 12 and 20, Response to RAI K 2 and Exhibit P, Tables P-3 and P-4.

[116] Location of the laydown area is shown in Figures P-1a and P-1e (Response to RAI, Exhibit P).

Construction of Stateline 3 would temporarily disturb up to 327 acres within the site boundary, including approximately 250 acres of cropland.[117] Construction and operation of the proposed facility could cause changes in the patterns of cultivation, seeding, fertilizing and harvesting near the turbines and access roads. Ground disturbance during construction and the creation of margin areas around access roads and turbine pads could increase opportunities for weeds to spread into cultivated areas. Construction disturbance could adversely affect soil quality by erosion or compaction.

The certificate holder would locate facility components and temporary construction laydown and staging areas to minimize disturbance with farming operations. Condition 40 requires the certificate holder to make reasonable efforts not to disturb farming and ranching activities on adjacent land. Condition 44 requires the certificate holder to locate access roads in consultation with landowners to minimize crop impacts. New facility access roads and improvements to existing farm roads would be available to farmers and landowners and may facilitate access to agricultural fields and movement of farm equipment and vehicles. The Council confirms that Conditions 40 and 44 apply to Stateline 3. In Revision 79, the Department recommends that the Council adopt Condition 125, which would require the certificate holder to record a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland in accordance with UCDC Section 152.616(HHH)(2)(E).

Condition 68 requires the certificate holder to implement *Revegetation Plan,* which includes weed control measures and measures to correct for soil compaction. The Department recommended revisions to the *Revegetation Plan*, as shown in Attachment B to the Proposed Order. In addition, Condition 68 specifically requires control of noxious weeds in areas disturbed by construction. Condition 30 requires the certificate holder to implement a weed control program during the life of the facility. Conditions 60, 61 and 92 require the certificate holder to implement erosion control measures during construction and operation. The Council confirms that Conditions 30, 60, 61, 68 and 92 apply to Stateline 3.

Construction-related traffic could cause occasional traffic delays when trucks deliver construction equipment, turbines and other facility components. Condition 77 requires the certificate holder to implement traffic safety measures during construction to minimize conflicts with harvest vehicles. During operation, facility staff vehicle traffic and facility maintenance vehicle traffic is unlikely to have a significant adverse effect on the movement of agricultural equipment or other farming vehicles as operational staff would consist fewer than ten employees.[118]

UCDC Sections 152.063 (C), (E) and (F)

UCDC Section 152.063(C) establishes side and rear yard setbacks. UCDC Section 153.003 defines "setback" as "the open yard space on a lot between any building and a lot line or a line defining an access easement or road right-of-way." The proposed O&M building is the only "building" that is part of the proposed Stateline 3 facilities, according to the definition in UCDC Section 153.003. UCDC Section 152.063(C)(2) establishes a setback distance of 5 feet for "accessory buildings or structures." UCDC Section 152.003 defines

[117] Based on the maximum acres of temporary disturbance within the site boundary as shown in Table 8 herein and the estimated impacts on "Dry Agriculture" habitat (Response to RAI, Exhibit P, Tables P-3, P-4 and P-5).
[118] Revised Request for Amendment #4, Exhibit U, p. 9.

"structure" more broadly than "building," and if the setback distance is applied to all "structures," then it would apply to all aboveground components of Stateline 3, including the wind turbines. UCDC Section 152.063(C)(3) provides that "special minimum yard setbacks may be established for an approved conditional use to protect the public health, safety and welfare and to mitigate possible adverse impacts to adjacent land uses."

UCDC Section 152.616(HHH)(5)(A) requires a setback for wind power generation facilities of 3,520 feet from "properties zoned residential use or designated on the Comprehensive Plan as residential." The Department proposed safety setback distances similar to those adopted by the Council in the site certificate for the Shepherds Flat Wind Farm.[119] Where the 3,520-foot setback that is required under UCDC Section 152.616(HHH)(5) does not apply, the applicants agreed to the following safety setbacks for wind turbines:[120]

- 110-percent of maximum blade tip height, measured from the centerline of the turbine tower to the nearest edge of any public road right-of-way, assuming a minimum right-of-way width of 60 feet.
- A minimum distance of 1,320 feet, measured from the centerline of the turbine tower to the center of the nearest residence existing at the time of tower construction.
- A minimum distance of 110-percent of maximum blade tip height, measured from the centerline of the turbine tower to the nearest boundary of the certificate holder's lease area.

The Department Council adopts Condition 126, which would incorporate the setbacks described above. Revision 80 addresses the condition.

UCDC Section 152.063(E) establishes setback distances from streams, lakes and wetlands. The ordinance applies to "sewage disposal installations such as septic tanks and drainfields" and to "all structures, buildings or similar permanent fixtures" and establishes a setback distance of 100 feet subject to specified exceptions. The applicants propose to construct an on-site septic system for the disposal of sewage from the O&M building. The septic system would be located at least 100 feet from any streams, lakes or wetlands.[121] The Council adopts Condition 123, which would require the certificate holder to design and construct the facility in compliance with the County design requirements as described in this ordinance. The condition is described in Revision 77 herein.

UCDC Section 152.063(F) provides that "all development shall be subject to the regulations contained in §§ 152.010 through 152.017, §§ 152.545 through 152.562, and to the exceptions standards of §§ 152.570 through 152.577." UCDC Sections 152.010, 152.011, 152.016 and 152.017 are discussed in the sections above.

UCDC Section 152.012 addresses outdoor storage in residential zones. This ordinance does not apply because the proposed facility is not located within a residential zone.

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[119] *Site Certificate for the Shepherds Flat Wind Farm* (July 25, 2008), Condition 40.
[120] Response to RAI K3.
[121] Response to RAI K4.

UCDC Section 152.013 addresses mobile homes. This ordinance does not apply because the applicant does not propose any mobile home as a component of the proposed facility.

UCDC Section 152.014 addresses seasonal farm worker housing. This ordinance does not apply because the applicant does not propose any seasonal farm worker housing as a component of the proposed facility.

UCDC Section 152.015 addresses fences and provides that a zoning permit is not required for construction of fences. The ordinance provides that there is no height limitation on fences "except at corners of street intersections and service drives where vision clearance requirements shall be met." Vision clearance requirements are addressed by UDCD Section 152.011, discussed above. UCDC Section 152.015 requires that fences meet all Oregon Uniform Building Code requirements." Condition 2 requires the certificate holder to design and construct the proposed facility in compliance with applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued. Condition 123 would require the certificate holder to design and construct the facility in compliance with the County design requirements as described in this ordinance.

The other ordinances made applicable to the proposed facility by incorporation in UCDC Section 152.063(F) are discussed below.

UCDC Sections 152.545 through 152.548

UCDC Sections 152.545 through 152.548 establish requirements for the types of signs allowed within different County zones and limitations on signs. Other than signs required for facility safety or required by law, the applicants propose to use only those signs required for operation and safety or required by federal, state, or local law.[122] The Council modifies Condition 37, as described in Revision 36, to require the certificate holder to design and construct the facility in compliance with the County design requirements for signs as described in these ordinances.

UCDC Sections 152.560 through 152.562

UCDC Sections 152.560 through 152.562 establish requirements for off-street parking and loading. For industrial uses, UCDC Section 152.560 requires one parking space per 200 square feet of floor space, plus one space per employee. The proposed O&M building would occupy up to 4,500 square feet and the Stateline 3 operations staff would consist of up to eight employees.[123] The ordinance, therefore, requires at least 28 off-street parking spaces. The O&M building would be located within a 10-acre site that would include an area for employee parking and storage. There would be adequate space for off-street parking.

UCDC Section 152.561 establishes a requirement for a loading area for schools and limits the use of off-street parking areas for loading and unloading of merchandise. The ordinance does not apply because Stateline 3 is not a school and its operation would not involve loading or unloading of merchandise.

UCDC Section 152.062 contains additional off-street parking and loading requirements. Subsection (A) addresses a change of use of a lot or building and is not

[122] Revised Request for Amendment #4, Exhibit K, p. 14-15.
[123] Revised Request for Amendment #4, Exhibit U, p. 9.

applicable. Subsection (B) allows the Planning Commission or Hearings Officer to determine requirements for types of buildings and uses not specifically listed. A wind power generation facility is not specifically listed, and so this ordinance gives the Planning Commission (and in this case the Council acting in its place) authority to determine off-street parking and loading requirements for Stateline 3. Subsections (C) and (D) are not applicable because they address multiple uses of a single structure or parcel and joint use agreements among multiple owners. Subsection (E) addresses off-street parking for dwellings and is not applicable. Subsection (F) provides that the required off-street parking spaces must be available for parking and must not be used for storage. Subsection (G) precludes locating required off-street parking or loading areas within a required yard. Subsection (H) requires plans to be submitted as provided by UCDC Section 152.767 and does not apply to the Council's siting decision because it is an administrative provision rather than a land use standard. Subsection (I) establishes design requirements for parking lots and is not applicable because the proposed Stateline 3 facilities do not include a parking lot. The Council finds that the proposed parking area within the 10-acre O&M building site would provide adequate parking area for Stateline 3.

UCDC Sections 152.570 through 152.577

UCDC Sections 152.570 through 152.577 provide for exceptions to the requirements of other County land use ordinances. These ordinances are not applicable because the applicants are not requesting any of the exceptions in the Request for Amendment #4.

UCDC Sections 152.610 through 152.614

These ordinances apply to conditional uses. UCDC Section 152.610 contains definitions rather than substantive standards. UCDC Section 152.611 contains procedural requirements pertaining to new or altered conditional uses. The proposed Stateline 3 facilities include a conditional use (the wind power generation facility components). The ordinance provides that the planning authority may impose conditions "considered necessary to protect the best interests of the surrounding area or the county as a whole." The ordinance provides that the County may require an applicant to furnish the County with "a performance bond or such other form of assurance that the county deems necessary to guarantee development in accordance with the standards established and conditions attached in granting a conditional use." If the Council amends the site certificate to authorize construction and operation of the reconfigured Stateline 3, the certificate holders would be legally bound by the terms and conditions of the site certificate and subject to the enforcement authority of the Council, and therefore the County performance bond described in this ordinance would not be necessary.

UCDC Section 152.612 describes the procedure for taking action on a conditional use application. The applicants have elected to have the Council make the land use decision in accordance with ORS 469.504(1)(b), and therefore the Council's procedural requirements apply. UCDC Section 152.612(C) provides that a conditional use permit "will not be approved unless the proposed use of the land will be in conformance with the County Comprehensive Plan." Applicable policies of the UCCP are discussed below, beginning at page 53. UCDC Section 152.612(D) provides that an applicant granted a conditional use permit must obtain a County Zoning Permit before commencing construction. If the Council approves Amendment #4, then the County must issue a conditional use permit (or amend the current CUP for the SWP) in accordance with ORS 469.401(3), and this ordinance would

require that the certificate holders obtain a Zoning Permit before beginning construction of Stateline 3. The Zoning Permit requirement is discussed below at page 63.

UCDC Section 152.613 establishes a one-year time limit on a conditional use permit but provides that the Planning Director or the proper planning authority may extend the time limit for an additional period not to exceed one year. This ordinance is a procedural requirement and is not a substantive land use criterion.

UCDC Section 152.614 precludes consideration of a conditional use application within one year after the denial of a like request unless there is "new evidence or a change of circumstances." This ordinance is a procedural requirement and is not a substantive land use criterion.

UCDC Section 152.615

> *In addition to the requirements and criteria listed in this subchapter, the Hearings Officer, Planning Director or the appropriate planning authority may impose the following conditions upon a finding that circumstances warrant such additional restrictions:*
>
> *(A) Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such a environmental effects as noise, vibration, air pollution, glare or odor;*
>
> *(B) Establishing a special yard, other open space or lot area or dimension;*
>
> *(C) Limiting the height, size or location of a building or other structure;*
>
> *(D) Designating the size, number, location and nature of vehicle access points;*
>
> *(E) Increasing the required street dedication, roadway width or improvements within the street right of way;*
>
> *(F) Designating the size, location, screening, drainage, surfacing or other improvement of a parking or loading area;*
>
> *(G) Limiting or otherwise designating the number, size, location, height and lighting of signs;*
>
> *(H) Limiting the location and intensity of outdoor lighting and requiring its shielding;*
>
> *(I) Requiring diking, screening, landscaping or other methods to protect adjacent or nearby property and designating standards for installation and maintenance.*
>
> *(J) Designating the size, height, location and materials for a fence;*
>
> *(K) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources;*
>
> *(L) Parking area requirements as listed in §§ 152.560 through 152.562 of this chapter.*

UCDC Section 152.615 describes conditions that may be imposed "upon a finding that circumstances warrant such additional restrictions." This ordinance applies to the wind energy

facility and all related or supporting facilities (including the temporary batch plant).The ordinance is a list of discretionary conditions and does not contain substantive standards. The County is bound by ORS 469.401(3) to issue a CUP for the SWP "subject only to conditions set forth in the site certificate or amended site certificate." The County has previously reviewed the site certificate conditions adopted by the Council for the SWP in the orders issued in 2001, 2002, 2003 and 2005 and has expressed no concerns to the Department. The County provided a list of conditions for Stateline 3.[124] The Department reviewed and identified for the County the comparable conditions that are included or proposed to be included in the Site Certificate.[125] The Department's recommended Revisions, discussed below beginning at page 128, include new conditions and modifications of conditions to accommodate the County's requests.

UCDC Section 152.616

UCCD Section 152.616 contains standards for the review of specific conditional uses. UCDC Section 152.616(HHH) contains specific standards applicable to wind power generation facilities.

> *(1) The procedure for taking action on the siting of a facility is a request for a conditional use. A public hearing pursuant to Sections 152.750 -755 and 152.771 shall be held to determine if the applicant meets the siting requirements for a Wind Power Generation Facility. The requirement for a hearing will not apply to proposed facilities for which EFSC is making the land use decision.*

UCDC Section 152.616(HHH)(1) describes the procedure that applies when a developer requests a CUP from the County for a proposed wind power generation facility. The applicants have elected to have the Council make the land use decision in accordance with ORS 469.504(1)(b), and therefore the Council's procedural requirements apply.

> *(2) The following information shall be provided as part of the application:*
>
> *(A) A general description of the proposed Wind Power Generation Facility, a tentative construction schedule, the legal description of the property on which the facility will be located, and identification of the general area for all components of the proposed Wind Power Generation Facility, including a map showing the location of components.*
>
> *(B) Identification of potential conflicts, if any, with: (1) Accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses; (2) Other resource operations and practices on adjacent lands except for wind power generation facilities on such adjacent lands; and (3) Accepted farm or forest practices on surrounding EFU/GF or NR land, including the nature and the extent of the impact of the proposed facility on the cost of such practices.*
>
> *(C) A Transportation Plan, with proposed recommendations, if any, reflecting the guidelines provided in the Umatilla County Transportation System Plan (TSP) and the transportation impacts of the proposed Wind Power Generation Facility upon the local and regional road system during and after construction, after*

[124] Email from Carol Johnson, Umatilla County Planning Department, February 13, 2009.
[125] Email from John White, February 13, 2009.

consultation with Umatilla County Public Works Director. The plan will designate the size, number, location and nature of vehicle access points.

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

(1) The landowners/farm tenants.

(2) Facility owner/operator representative. (Chair)

(3) Oregon Department of Fish and Wildlife representative, if the agency chooses to participate.

(4) Two Umatilla County residents with no direct economic interest in the project and recommended by the applicants for appointment by the Umatilla County Board of Commissioners.

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

(6) Umatilla County Planning Commission member.

At the request of applicant, this committee requirement may be waived or discontinued by the County.

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

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

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

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

(I) A socioeconomic impact assessment of the Wind Power Generation Facility, evaluating such factors as, but not limited to, the project's effects upon the social,

economic, public service, cultural, visual, and recreational aspects of affected communities and/or individuals. These effects can be viewed as either positive or negative. In order to maximize potential benefits and to mitigate outcomes that are viewed as problematic, decision makers need information about the socioeconomic impacts that are likely to occur.

(J) If the Wind Power Generation Facility exceeds 20 acres in size, a Goal 3 exception is required as found in OAR 660-033-0130 (22).

(K) Information pertaining to the impacts of the Wind Power Generation Facility on: (1) Wetlands; (2) Wildlife (all potential species of reasonable concern); (3) Wildlife Habitat; (4) Criminal Activity (vandalism, theft, trespass, etc.) and proposed actions, if any, to avoid, minimize or mitigate negative impacts.

(L) A dismantling and decommissioning plan of all components of the Wind Power Generation Facility, as provided in '152.616 (HHH)(7).

UCDC Section 152.616(HHH)(2) describes the content of an application for a CUP under the County procedure. Because the applicants have elected to have the Council make the land use decision in accordance with ORS 469.504(1)(b), the applicable application requirements for the proposed Stateline 3 facilities are described in OAR 345-027-0060, which describes the requirements for a request to amend a site certificate. The applicants' amendment request contains exhibits that are analogous to the subsections of UCDC Section 152.616(HHH)(2), as discussed below.

A description of the components and location of the proposed Stateline 3 facilities, required by subsection (A) of the ordinance, is addressed in Exhibits B and C of the amendment request.

Potential adverse effects of Stateline 3 on accepted farming practices, described in subsection (B) of the ordinance, are addressed in Exhibit K of the amendment request.

Transportation impacts of the proposed facility on traffic safety, described in subsection (C) of the ordinance, are addressed in Exhibit U of the amendment request.

Subsection (D) of the ordinance specifically provides that compliance with the Council's avian monitoring requirements (discussed in Exhibit P of the amendment request) satisfies the requirements of the ordinance subsection.

The applicants have agreed to record a Covenant Not to Sue with regard to generally accepted farming practices, required by subsection (E) of the ordinance.[126] The Council adopts Condition 125, which requires the certificate holder to execute a Covenant Not to Sue that complies with the County requirement.

Fire prevention and response measures for Stateline 3, described in subsection (F) of the ordinance, are addressed in Exhibit U of the amendment request.

Subsection (G) of the ordinance addresses erosion control and specifically provides that having an NPDES permit satisfies the requirements of the ordinance subsection. Exhibit I of the amendment request addresses soil impacts. Condition 60 requires the certificate holder

[126] Response to RAI K5.

to have an NPDES 1200-C permit and to conduct all Stateline 3 construction work in compliance with an Erosion and Sediment Control Plan.[127] Condition 61 requires mitigation measures during construction to reduce potential adverse impacts to soils from erosion. Condition 65 requires erosion control as part of the post-construction *Revegetation Plan*. Condition 92 requires mitigation measures during facility operation to reduce potential adverse impacts to soils from erosion.

A weed control plan, required by subsection (H) of the ordinance, is addressed in Exhibits K and P of the amendment request. Conditions 65 and 68 require the certificate holder to implement *Revegetation Plan*, which includes weed control measures. The Department recommended revisions to the *Revegetation Plan*, as shown in Attachment B to the Proposed Order. In addition, Condition 68 specifically requires control of noxious weeds in agricultural areas disturbed by construction. Condition 30 requires the certificate holder to implement a weed control program during the life of the facility.

Assessment of the effects of Stateline 3 upon the social, economic, public service, cultural, visual and recreational aspects of affected communities, required by subsection (I) of the ordinance, is addressed in Exhibits S, R, T and U of the amendment request.

Subsection (J) of the ordinance is a substantive standard regarding the acres of farmland that the footprint of the proposed wind power generation facility would occupy. The standard is addressed in Exhibit K of the amendment request. The ordinance cross-references OAR 660-033-0130, a State land use regulation that includes a similar 20-acre limitation that applies to a "power generating facility" located on low-value farmland. In January 2009, LCDC amended OAR 660-033-0130, removing the 20-acre limitation for wind power generation facilities but adopting new requirements. The limitation on the use of farmland is discussed separately below at page 63.

Information about the impacts of Stateline 3 on wetlands, wildlife, wildlife habitat and criminal activity, described in subsection (K) of the ordinance, is addressed in Exhibits J, P, Q and U of the amendment request.

A plan for "decommissioning" the wind power generation facility, described in subsection (L) of the ordinance, is addressed in Exhibit W of the amendment request.

> *(3) Umatilla County may impose clear and objective conditions in accordance with the County Comprehensive Plan, County Development Code and state law, which Umatilla County considers necessary to protect the best interests of the surrounding area, or Umatilla County as a whole.*

UCDC Section 152.616(HHH)(3) gives the County discretion to impose "clear and objective conditions…necessary to protect the best interests of the surrounding area, or Umatilla County as a whole." The County has reviewed the site certificate conditions that the Council has previously adopted for the SWP and has proposed new conditions for Stateline 3.

> *(4) Prior to commencement of any construction, all other necessary permits shall be obtained, e.g. Umatilla County Zoning Permit, road access and other permits*

[127] The applicants have submitted to DEQ an amended NPDES 1200-C application updating the information from the previously-approved Stateline 3 (Revised Request for Amendment #4, Exhibit I, p. 1.)

from the Umatilla County Public Works Department, and from the Oregon Department of Transportation.

Condition 2 requires the certificate holders to obtain all necessary state and local permits or approvals required for construction of Stateline 3.

(5) The following requirements and restrictions apply to the siting of a facility:

(A) The Wind Power Generation Facility shall be on property zoned EFU/GF or NR, and no portion of the facility shall be within 3,520 feet of properties zoned residential use or designated on the Comprehensive Plan as residential. (For clarification purposes of this section, EFU/GF/NR zones are not considered zoned for residential use.)

(B) Reasonable efforts shall be made to blend the wind facility=s towers with the natural surrounding in order to minimize impacts upon open space and the natural landscape.

(C) Reasonable efforts shall be taken to protect and to preserve existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

(D) The turbine towers shall be designed and constructed to discourage bird nesting and wildlife attraction.

(E) The turbine towers shall be of a size and design to help reduce noise or other detrimental effects.

(F) Private access roads shall be gated to protect the facility and property owners from illegal or unwarranted trespass, and illegal dumping and hunting.

(G) Where practicable the electrical cable collector system shall be installed underground, at a minimum depth of 3 feet; elsewhere the cable collector system shall be installed to prevent adverse impacts on agriculture operations.

(H) Required permanent maintenance/operations buildings shall be located off-site in one of Umatilla County's appropriately zoned areas, except that such a building may be constructed on-site if (1) the building is designed and constructed generally consistent with the character of similar buildings used by commercial farmers or ranchers, and (2) the building will be removed or converted to farm use upon decommissioning of the Wind Power Generation Facility consistent with the provisions of '152.616 (HHH)(7).

(I) A Wind Power Generation Facility shall comply with the Specific Safety Standards for Wind Facilities delineated in OAR 345-024-0010 (as adopted at time of application).

UCDC Section 152.616(HHH)(5) lists requirements and restrictions applicable to siting a wind power generating facility in the County. These requirements and restrictions are addressed by site certificate conditions. Condition 2 requires the certificate holder to construct the facility substantially as described in the site certificate.

Subsection (A) of the ordinance requires that a wind power generating facility be located on land zoned EFU, GF (Grazing/Farm Zone) or NR (Non-Resource Zone). The

proposed Stateline 3 facilities would be located entirely on EFU land. Subsection (A) of the ordinance also requires that "no portion of the facility shall be within 3,520 feet of properties zoned residential use or designated on the Comprehensive Plan as residential." Condition 126 incorporates this County requirement.[128]

Subsection (B) requires that "reasonable efforts" be made to blend the wind power generation facility's towers with the surrounding landscape. Condition 37 addresses measures to reduce the visual impact of the proposed Stateline 3 facilities.

Subsection (C) requires "reasonable efforts…to protect and to preserve existing trees, vegetation, water resources, wildlife habitat or other significant natural resources." A discussion of the Council's Fish and Wildlife Habitat Standard begins at page 105 and addresses the applicants' efforts to reduce impact on these resources and the Department's recommended conditions. The potential impact on water resources is addressed in the discussion of the Ground Water Act below at page 124. The effect of the facility on wetlands and other waters of the state protected by the state's Removal/Fill Law is addressed below at page 123.

Subsection D requires that turbine towers be designed and constructed to discourage bird nesting and wildlife attraction. Condition 37 requires the certificate holders to use smooth turbine tower structures that lack perching or nesting opportunities for birds.

Subsection E requires that wind turbine towers be designed "to reduce noise or other detrimental effects." Condition 2 requires the certificate holder to design and construct the facility in compliance with State laws and rules. As discussed below, beginning at page 118, and subject to the site certificate conditions described in that discussion, the proposed Stateline 3 facilities would comply with the State noise control regulations. Other possible "detrimental effects" would be reduced by locating turbines away from residences and public roads, as required by Condition 126.

Subsection F is a County design requirement for gates on private access roads. In Revision 77, the Department recommends that the Council adopt Condition 123, which would require the certificate holder to design and construct Stateline 3 in compliance with the County design requirements as described in this ordinance.

Subsection G requires that collector lines be installed underground or, if aboveground, that they be installed to prevent adverse impacts on agriculture operations. The applicants propose to locate all of the 34.5-kV collector lines underground.[129] Condition 62 requires the underground collector lines to be buried at least 3 feet below grade.

Subsection H requires that any on-site O&M building be designed and constructed generally consistent with the character of similar buildings used by commercial farmers or ranchers and that the building be removed or converted to farm use upon "decommissioning" of the facility. Condition 37 requires the design of the proposed O&M building to be consistent with farm structures in the area.[130] Site restoration is discussed above, beginning at page 17. The cost estimate for site restoration assumes that O&M building would be removed

[128] The applicants have agreed to comply (Revised Request for Amendment #4, Exhibit K, p. 4).
[129] Revised Request for Amendment #4, Exhibit K, p. 6.
[130] Revised Request for Amendment #4, Exhibit K, p. 7.

and includes the cost of demolition, but the building might be converted to farm use at the request of the landowner. The Department's recommended Revision 66 would modify Condition 109 to incorporate the site restoration cost estimate for the new Stateline 3 configuration.

Subsection I requires that a wind power generation facility comply with the Council's Public Health and Safety Standards for Wind Facilities as described in OAR 345-024-0010. Compliance with these standards is discussed below at page 96.

> *(6) To the extent feasible, the county will accept information presented by an application for an EFSC proceeding in the form and on the schedule required by EFSC.*

UCDC Section 152.616(HHH)(6) is a procedural requirement establishing that the County will accept information presented in a site certificate application in the form and schedule required by the Council.

> *(7) The applicants dismantling of uncompleted construction and/or decommissioning plan for the Wind Power Generation Facility shall include the following information:*[131]
>
> * * *
>
> *(G) For projects sited by EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with the dismantling and decommissioning requirements of this Section 152.616 (HHH)(7).*

UCDC Section 152.616(HHH)(7) requires that the applicant provide a plan for "dismantling of uncompleted construction and/or decommissioning plan." The requirements of this ordinance are met "for facilities sited by EFSC" if the certificate holder complies with the Council's "financial assurance and decommissioning standards." The Council's Retirement and Financial Assurance Standard is discussed above, beginning at page 15. For the reasons discussed therein and subject to the site certificate conditions, the certificate holders would comply with this standard.

> *(8) A bond or letter of credit shall be established for the dismantling of uncompleted construction and/or decommissioning of the facility. (See §152.616 (HHH)(7)) For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement.*

UCDC Section 152.616(HHH)(8) requires a bond or letter of credit for the cost of "the dismantling of uncompleted construction and/or decommissioning of the facility." The ordinance provides that the bond or letter of credit that the Council requires satisfies the requirement of the ordinance for "projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC)." In Revisions 49 and 66, the Department recommends modification of Conditions 80 and 109, which require the certificate holders to provide a bond or letter of credit for site restoration in a form and amount satisfactory to the Council.

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[131] Omitted subsections describe the required content of a decommissioning plan, including site restoration, the County bond or letter of credit requirement and arbitration.

(9) The actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, connecting lines, and transmission lines, shall be provided to Umatilla County once commercial electrical production begins.

(10) A summary of as built changes in the facility from the original plan, if any, shall be provided by the owner/operator.

UCDC Section 152.616(HHH)(9) requires that "actual latitude and longitude location…of each turbine tower, connecting lines, and transmission lines" be provided when commercial operation of the wind power generation facility begins, and UCDC Section 152.616(HHH)(10) requires a summary of "as built changes in the facility from the original plan." Condition 84, modified as described in Revision 50, requires the certificate holder to provide the actual location of turbine towers, connecting lines and transmission lines and a summary of as-built changes as required by the County ordinance.

(11) (A) The Wind Power Generation Facility requirements shall be facility specific, but can be amended as long as the facility does not exceed the boundaries of the Umatilla County conditional use permit where the original facility was constructed.

(B) An amendment to the conditional use permit shall be required if proposed facility changes would: (1) Increase the land area taken out of agricultural production by an additional 20 acres or more; (2) Increase the land area taken out of agricultural production sufficiently to trigger taking a Goal 3 exception; (3) Require an expansion of the established facility boundaries; (4) Increase the number of towers; (5) Increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to the repowering or upgrading of power generation capacity. Notification by the facility owner/operator to the Umatilla County Planning Department of changes not requiring an amendment are encouraged, but not required. An amendment to a Site Certificate issued by EFSC will be governed by the rules for amendments established by EFSC.

UCDC Section 152.616(HHH)(11) establishes the County procedure for amendment of a CUP for a wind generation facility. The ordinance is a procedural requirement and is not a substantive land use standard. The ordinance notes that an amendment to a site certificate is governed by the Council's rules.

(12) Within 120 days after the end of each calendar year the facility owner/operator shall provide Umatilla County an annual report including the following information:

(A) Energy production by month and year.

(B) Non-proprietary information about wind conditions. (e. g. monthly averages, high wind events, bursts)

(C) A summary of changes to the facility that do not require facility requirement amendments.

(D) A summary of the avian monitoring program – bird injuries, casualties, positive impacts on area wildlife and any recommendations for changes in the monitoring program.

(E) Employment impacts to the community and Umatilla County during and after construction.

(F) Success or failures of weed control practices.

(G) Status of the decommissioning fund.

(H) Summary comments – any problems with the projects, any adjustments needed, or any suggestions.

The annual report requirement may be discontinued or required at a less frequent schedule by the County. The reporting requirement and/or reporting schedule shall be reviewed, and possibly altered, at the request of the facility owner/operator. For facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.

UCDC Section 152.616(HHH)(12) requires an annual report to the County from the owner or operator of a wind power generating facility. The ordinance is a procedural requirement and is not a substantive land use standard. The ordinance notes that for facilities under Council jurisdiction, compliance with the Council's annual reporting requirement satisfies the ordinance. Condition 8 requires the certificate holder to report to the Council every six months during construction and annually after beginning construction.

UCDC Section 152.617

UCDC Section 152.617 describes standards applicable to conditional uses and "land use decisions" on EFU zoned lands. The ordinance is divided into two sub-parts. Subpart I applies to "EFU Conditional Uses." Among these uses are "commercial facilities for the purposes of generating and distributing power for public use by sale" (UCDC Section 152.617(I)(C)), which include "electrical substations" but not "wind power generating facilities." Standards applicable to wind power generating facilities are addressed by UCDC Section 152.616(HHH), discussed above. Subpart I subsections (A) and (K) apply to the proposed temporary concrete batch plant.

Subpart II applies to "EFU Land Use Decisions" (other than conditional uses). UCDC Section 152.617(II)(7) lists "utility facilities necessary for public service." UCDC Section 152.617(II)(8) lists "wind power generating facility" but simply cross-references the standards in UCDC Section 152.616, discussed above.

The criteria that apply to batch plants and to utility facilities necessary for public service are discussed separately below.

Batch Plant

The County identified UCDC Section 152.617(I)(K)(2), (8) and (10) as applicable to the proposed temporary concrete batch plant if it is located within the disturbed lands of an existing gravel quarry.[132] The County identified UCDC Section 152.617(I)(A) as applicable if

[132] Email from Carol Johnson, Umatilla County Planning Department, January 29, 2009.

the batch plant is located within the 30-acre laydown area. The applicants' preferred location for the batch plant is within the quarry site. The Council finds that the proposed batch plant in either location would comply with the applicable requirements of UCDC Section 152.617, for the reasons discussed below.

> *(K) Mining*
>
> *Commercial gravel bits* [sic] *or extraction, surface mining and processing and the operations conducted for the exploration, mining and processing of geothermal resources, other mineral resources, or other subsurface resources.*
>
> ***
>
> *(2) Processing equipment shall comply with the following restrictions and regulations under the following circumstances:*
>
> *(a) In an existing pit.*
>
> *(1) Equipment shall not be located within 50 feet of a public road, county road or utility right of way or located further away if deemed necessary.*
>
> *(2) Equipment shall not be located within 100 feet from any part of a property line, which is adjacent to a residential dwelling or further if deemed necessary.*
>
> *(b) In a new pit. Where the use of processing equipment such as crushers, batch plants, and the like, the operator will be required to place such equipment not closer than 500 feet from any part of a property line adjacent to a residential dwelling unless the operator can obtain a written release from the adjacent residential property owner allowing a closer setback.*

If the batch plant is located within the existing quarry site, then 152.617(I)(K)(2)(a) applies. The batch plant processing equipment would not be located within 50 feet of Gerking Flat Road, which is the nearest public road, county road or utility right of way. In Revision 80, the Department recommends that the Council adopt Condition 126, which would incorporate the County's setback requirement for batch plant equipment. There are no residential properties within 100 feet of the quarry.[133]

> *(8) The operation complies with all applicable air, noise and water quality regulations of all county, state or federal jurisdictions and all applicable state or federal permits are obtained;*

Condition 2 requires the certificate holder to obtain all necessary state and local permits or approvals required for construction of Stateline 3. The certificate holder would be obligated to comply with all applicable federal laws and regulations, subject to the jurisdiction of the appropriate federal agencies. The noise generated by the temporary batch plant would be exempt from the limits on industrial noise under OAR 340-035-0035(5)(g) or (h) as noise associated with construction.

[133] Staff Report, Conditional Use Request #C-184 (March 26, 1981).

(10) All equipment, refuse, and temporary structures shall be removed from the project site and the site left free of debris after completion of the project;

Condition 20 requires restoration of all areas temporarily disturbed by construction. The site used for the temporary batch plant would be restored when construction is complete.

(A) Asphalt plants.

(1) Access roads shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties;

(2) Processing equipment shall not be located or operated within 500 feet from a residential dwelling;

(3) Haul roads shall be constructed to a standard approved by the Public Works Director to reduce noise, dust and vibration;

(4) The operation complies with all applicable air, noise, and dust regulations of all county, state or federal jurisdictions; and all state and federal permits are obtained before the activity begins;

(5) New plants proposed on EFU zoned lands. Plants that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted Vineyard totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(6) Complies with other conditions deemed necessary.

If the batch plant is located within the 30-acre laydown area, then UCDC Section 152.617(I)(A) applies. Subsection (1) requires that access roads be arranged to minimize traffic danger and nuisance to surrounding properties. The access road to the 30-acre laydown area would intersect with Gerking Flat Road.[134] The road would not create any significant risk to surrounding properties or to traffic safety.

The proposed location complies with subsection (2) because the nearest residential dwelling is more than 500 feet from the laydown area.[135] In compliance with subsection (3), Condition 61 requires that the certificate holder construct access roads in consultation with the Umatilla County Public Works Director. Under Conditions 2 and 123, the certificate holder would construct access roads in accordance with applicable design ordinances. The proposed laydown area is on EFU-zoned land but is not located within two miles of a planted vineyard. Locating the temporary batch plant within the laydown area therefore complies with subsection (5).

Site certificate conditions would ensure compliance with subsection (4) of the ordinance. Condition 2 requires the certificate holder to obtain all necessary state and local permits or approvals required for construction of Stateline 3. The certificate holder would be obligated to comply with all applicable federal laws and regulations, subject to the jurisdiction of the appropriate federal agencies. The noise generated by the temporary batch plant would

[134] Response to RAI, Exhibit C, Figures C-2a and C-3a.
[135] Response to RAI, Exhibit X, Figure X-2a.

be exempt from the limits on industrial noise under OAR 340-035-0035(5)(g) or (h) as noise associated with construction.

Subsection (6) requires compliance with "other conditions deemed necessary." The County recommended conditions for Stateline 3 consistent with applicable County ordinances.[136] The Department's recommended Revisions, discussed below beginning at page 128, include new conditions and modifications of conditions to accommodate the County's requests.

Utility Facilities Necessary for Public Service

The proposed 230-kV transmission line that is part of the proposed Stateline 3 facilities is subject to UCDC Section 152.617(II)(7).[137] For this use, the applicant must meet the standards discussed below.[138] The County did not separately identify criteria applicable to the proposed Stateline 3 substation, but the substation would be a "related or supporting facility" under the County's definition of a "wind power generating facility," quoted above at page 30, and it is therefore included in the analysis of ordinances applicable to the wind power generating facility herein.[139]

(a) Demonstrate that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(1) Information provided in the technical and engineering feasibility;

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

(A) Show a lack of available urban and non-resource lands;

(B) Due to availability of existing rights of way.

(C) Due to public health and safety concerns; and

(D) Show it must meet other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed above may be considered, but cost alone, including the cost of land, may not be the only consideration in determining that a utility facility is necessary for public service.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

[136] Email from Carol Johnson, Umatilla County Planning Department, February 13, 2009.
[137] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.
[138] The County standards are substantially the same as the requirements under ORS 215.275, except that the statute does not contain a provision similar to subsection (e).
[139] A substation that is not a related or supporting facility might otherwise be analyzed as a "commercial utility facility" under UCDC Section 152.616(T) or Section 152.617(I)(C).

(d) Mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) Any proposed extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

The amendment request demonstrates that the proposed 230-kV transmission line must be sited in the EFU zone. There is no non-EFU land between the location of the proposed wind turbines and the existing Stateline 230-kV line located between the Nine Mile Substation and Wallula Substation in Washington. The proposed Stateline 3 facilities would connect to the regional power grid through the existing 230-kV line at the PacifiCorp Wallula Substation in Walla Walla County, Washington.[140] There are no alternative transmission line routes for the transmission line that would affect less EFU land. "Technical and engineering feasibility," addressed under subsection (a)(1) of the ordinance, requires that there be an interconnecting transmission line to deliver the deliver the power to the regional transmission system. The proposed interconnection transmission line is "locationally dependent" as addressed under subsection (a)(2). It must cross EFU-zoned land to achieve a reasonably direct route between the wind turbines and the existing regional transmission infrastructure. There are no "available urban and non-resource lands" on which to locate the transmission line. There is no existing transmission right-of-way between the proposed Stateline 3 wind turbine locations and the existing Stateline interconnection with the PacifiCorp regional transmission system. The proposed route is on privately-owned land where public access is limited and where the risk to public health and safety is low. Condition 2 requires that the certificate holder design and construct the transmission line in compliance with all applicable State laws and rules and with all applicable permit requirements of other State agencies. The transmission line must meet any applicable federal agency requirements.

In accordance with subsection (b) of the ordinance, the Council finds that the proposed transmission line is a "utility facility necessary for public service" without consideration of the costs associated with the factors listed in subsection (a).

Subsection (c) of the ordinance requires that the owner of a utility facility approved under UDCD Section 152.617(II)(7) be responsible for restoring agricultural land and associated improvements to their former condition if they are damaged or disturbed by the siting, maintenance, repair or reconstruction of the facility. Condition 20 requires the certificate holder to restore vegetation to the extent practicable and landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Conditions 65 and 68 require the certificate holder to restore areas disturbed by facility construction according to the methods and monitoring procedures described in the

[140] Revised Request for Amendment #4, Exhibit B, p. 6, and Exhibit K, Figure K-1.

Revegetation Plan discussed herein. Revision 45 incorporates the Department's recommended modifications of the *Revegetation Plan*.

Subsection (d) of the ordinance requires the applicant "to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands." Mitigation and minimization of impacts to farmland are discussed above in addressing UCDC Section 152.061, beginning at page 33. For the reasons discussed in reference to that ordinance and subject to the conditions described herein, the Council finds that the applicant would "mitigate and minimize" the impacts of the transmission line on surrounding lands devoted to farm use as required under UDCD Section 152.617(II)(7)(d).

Subsections (e) and (f) apply to sewer systems and interstate natural gas pipelines and do not apply to the proposed transmission line.

Comprehensive Plan Policies

UCDC Section 152.612(C) provides that a CUP "will not be approved unless the proposed use of the land will be in conformance with the County Comprehensive Plan." The County identified the applicable policies of the UCCP.[141] The County indicated that "most, if not all" of the identified policies are implemented through the UCDC. The Council finds that the proposed Stateline 3 facilities would be in conformance with the identified applicable policies of the UCCP for the reasons discussed below.

Citizen Involvement

> *Policy 1: Provide information to the public on planning issues and programs, and encourage continuing citizen input to planning efforts.*[142]
>
> *Policy 5: Through appropriate media, encourage those County residents' participation during both city and county deliberation proceedings.*[143]

The identified Citizen Involvement policies are procedural and do not contain substantive standards applicable to the siting of the proposed facility. The applicants have elected to have the Council make the land use decision in accordance with ORS 469.504(1)(b), and therefore the Council's procedural requirements apply. The Council's procedure for amending a site certificate is a public process. The Request for Amendment #4 is a public document that has been made available at libraries in Umatilla County and on the Department's Internet website. The Proposed Order is a public document available on the website. The Department uses direct mailing and the Internet to inform the public about the proceedings regarding the proposed amendment of the SWP site certificate. There are opportunities for public comment throughout the amendment process. Before the Council takes final action on the amendment request, there is opportunity for public comment and for requesting a contested case proceeding. The Council's meetings are open to the public.

[141] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.
[142] UCCP, Chapter V, p. 6.
[143] UCCP, Chapter V, p. 7.

Agriculture

Policy 1: Umatilla County will protect, with Exclusive Farm Use zoning pursuant to ORS 215, lands meeting the definition of farmland in this plan and designated as Agricultural on the Comprehensive Plan Map.[144]

The County has established an EFU zone and has implemented ordinances to protect farmland. The proposed Stateline 3 facilities are located within the County's EFU zone. The applicable ordinances from the UCDC have been addressed in sections above.

Policy 8: The county shall require appropriate procedures/standards/policies be met in the Comprehensive Plan and Development Ordinance when reviewing non-farm uses for compatibility with agriculture.[145]

The County has identified the applicable standards and policies for reviewing the proposed Stateline 3 facilities.[146] The County has participated in the Council's amendment review process in accordance with ORS 469.504.

Policy 17: Maintain continuing liaison with state and federal agencies to insure water supplies for farming and to help coordinate other land use development related to agriculture.[147]

Water use in Oregon is subject to regulation by OWRD. By definition in OAR 345-001-0010, OWRD is a reviewing agency in the Council's site certificate amendment process, and OWRD has received a copy of the Request for Amendment #4. OWRD has reviewed the application and has not expressed any concerns to the Department regarding the anticipated water use for construction and operation of Stateline 3.

The applicants estimate that up to 120,000 gallons of water per day (and a total of approximately 8 million gallons) would be needed during construction of the proposed Stateline 3 facilities.[148] The water would be purchased from the City of Helix under the City's existing municipal water right or purchased from a private landowner under a limited license issued by OWRD. During facility operation, water use at the O&M building is not expected to exceed 1,000 gallons per day from a new on-site well. Use of water consistent with approved water rights ensures protection of existing water rights for agricultural uses. Water use is discussed herein at page 124.

Open Space, Scenic and Historic Areas, and Natural Resources

Policy 1: (a) The County shall maintain this resource by limiting development mainly to existing built up areas.[149]

This policy is related to the finding that Umatilla County has a "sparse rural population" and is "predominantly open space." The proposed Stateline 3 wind power generating facility is a use allowed within the EFU zone under UCDC Section 152.060. A commercial wind energy facility must be located within open space where a sufficient wind

[144] UCCP, Chapter VI, pp. 1-2.
[145] UCCP, Chapter VI, p. 9.
[146] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.
[147] UCCP, Chapter VI, p. 12.
[148] Revised Request for Amendment #4, Exhibit O, p. 1.
[149] UCCP, Chapter VIII, p. 5.

resource exists to support economic power generation. Nevertheless, most of the land area within the site boundary would remain open space because individual wind turbines would be widely spaced and other facility structures would occupy a limited area. Of the 7,055 acres within the site boundary, the permanent facility structures would occupy no more than 59 acres, or approximately than one percent of the land.[150]

> *Policy 5: (a) The County shall maintain rural agricultural lands, Development shall be of low density to assure retention of upland game habitat, (b) Land uses should maintain the vegetation along streambanks, fence rows, woodlots, etc. Research ways to reduce harassment and loss of upland game by free roaming dogs and cats.*[151]

This policy is related to the finding that "land use classifications most compatible with upland game habitat are agriculture, forestry, open space, and floodplain." The County has classified all of the land where the proposed Stateline 3 facilities would be located as agricultural by the EFU zoning designation. The applicants have identified riparian areas (areas of streambank vegetation) as Category 2 habitat.[152] There are approximately 2 acres of riparian habitat within the site boundary, none of which would be disturbed by construction of Stateline 3.[153] There are no woodlots within the site boundary. Condition 65 requires the certificate holder to restore areas of vegetation disturbed by construction of Stateline 3 in accordance with the *Revegetation Plan* discussed herein. The Council adopts Condition 131, which would require the certificate holder to avoid disturbance of Category 2 habitat.

> *Policy 6: (a) Developments or land uses that require drainage, channelization, filling or excessive removal of riparian vegetation in sensitive waterfowl areas should be identified….*[154]

The applicants assessed the habitat within the site boundary in Exhibit P of the amendment request. There are no waterfowl areas within the site boundary. Approximately 2 acres of riparian habitat exists within the site boundary, and none of this habitat would be disturbed.[155] Condition 65 requires the certificate holder to restore areas of vegetation disturbed by construction of Stateline 3 in accordance with the *Revegetation Plan* discussed herein.

> *Policy 8: (a) Setbacks shall be established to protect significant and other wetlands.*[156]

UCDC Section 152.063(E) establishes setback distances from streams, lakes and wetlands. The ordinance applies to "sewage disposal installations such as septic tanks and drainfields" and to "all structures, buildings or similar permanent fixtures" and establishes a setback distance of 100 feet, subject to specified exceptions. The proposed septic system for the Stateline 3 O&M building would be located more than 100 feet from any streams, lakes or

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[150] Based estimates shown in Table 8 herein.
[151] UCCP, Chapter VIII, p. 8.
[152] Revised Request for Amendment #4, Exhibit P, p. 8.
[153] Response to RAI, Exhibit P, Table P-5.
[154] UCCP, Chapter VIII, pp. 8-9.
[155] Response to RAI, Exhibit P, Table P-5.
[156] UCCP, Chapter VIII, p. 10.

wetlands.[157] In Revision 77, the Department recommends that the Council adopt Condition 123, which would require the certificate holder to design and construct the septic system in compliance with the County setback design requirements described in the ordinance.

> *Policy 9: (a) The County shall encourage land use practices which protect and enhance significant wetlands.*[158]

This policy is related to a finding that identifies "significant wetlands" by reference to Table D-XI(a) of the Technical Report. The proposed facility would be located in Townships 5 and 6 North and Ranges 32, 33 and 34 East.[159] None of the significant wetlands listed in Table D-XI(a) of the Technical Report are within the proposed site boundary.[160]

> *Policy 10:*
>
> * * *
>
> *(c) Compatible land use shall maintain the riparian vegetation along streams in the floodplain. Streambank vegetation shall be maintained along streams outside of the floodplain by utilizing appropriate setbacks.*
>
> *(d) Development or land use that requires channelization, excessive removal of streamside vegetation, alteration of stream banks and filling into stream channels shall be restricted in order to maintain stream integrity.*
>
> *(e) New roads, bridges and access rights-of-way shall be designed to avoid channel capacity, and minimize removal of shoreline vegetation.*[161]

This policy is related to the finding regarding land use classifications "most compatible with river and stream fish resources" (including the "agriculture" land use classification). The proposed Stateline 3 facilities are not located within the floodplain of rivers or streams in Umatilla County.[162] UCDC Section 152.063(E) establishes setback distances from streams, lakes and wetlands, and the certificate holders would comply with the ordinance (Condition 123). No riparian vegetation would be affected by construction of the proposed Stateline 3 facilities. Construction of the proposed Stateline 3 facilities would not affect any State jurisdictional waters or wetlands, as discussed below at page 123.

> *Policy 20:*
>
> *(a) Developments of potentially high visual impacts shall address and mitigate adverse visual effects in their permit application, as outlined in the Development Ordinance standards,*
>
> *(b) It is the position of the County that the Comprehensive Plan designations and zoning already limit scenic and aesthetic conflicts by limiting land uses or by mitigating conflicts through ordinance criteria. However, to address any specific,*

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[157] Response to RAI K4.
[158] UCCP, Chapter VIII, p. 10.
[159] Revised Request for Amendment #4, Exhibit C, p. 1.
[160] Umatilla County Comprehensive Plan Technical Report (May 1980, latest major addition September 1984), Table D-XI(a), p. D-31.
[161] UCCP, Chapter VIII, pp. 10-11.
[162] Response to RAI K6.

potential conflicts, the County shall insure special consideration of the following when reviewing a proposed change of land use:

1. Maintaining natural vegetation whenever possible.

2. Landscaping areas where vegetation is removed and erosion might result.

3. Screening unsightly land uses, preferably with natural vegetation or landscaping

4. Limiting rights-of-way widths and numbers of roads intersecting scenic roadways to the minimum needed to safely and adequately serve the uses to which they connect.

5. Limiting signs in size and design so as not to distract from the attractiveness of the area.

6. Siting developments to be compatible with surrounding area development, and recognizing the natural characteristics of the location.

7. Limiting excavation and filling only to those areas where alteration of the natural terrain is necessary, and revegetating such areas as soon as possible.

8. Protection vistas and other views which are important to be recognized because of their limited number and importance to the visual attractiveness of the area.

9. Concentrating commercial developments in areas where adequate parking and public services are available and discouraging strip commercial development.

* * * [163]

The applicants addressed the visual impacts of the proposed facility in Exhibit R of the amendment request. The Council's findings and site certificate conditions related to visual impacts are discussed below beginning at page 88. UCDC Section 152.616(HHH)(5)(B) requires that "reasonable efforts" be made to blend the wind power generation facility's towers with the surrounding landscape. Condition 37 addresses measures to reduce the visual impact of the proposed Stateline 3 facilities. Revision 36 includes modification of Condition 37 to require compliance with UCDC Sections 152.545 through 152.548, which address design standards for signs. Condition 65 requires the certificate holder to restore vegetation disturbed by construction in accordance with the *Revegetation Plan* described herein.

Policy 22: The County shall cooperate with state agencies and other historical organization to preserve historic buildings and sites, cultural areas, and archeological sites and artifacts.[164]

Policy 23: (a) Umatilla County shall encourage and cooperate in developing a detailed county-wide historic site inventory….[165]

[163] UCCP, Chapter VIII, pp. 15-17. The County identified Policy 20(a) and 20(b)(1-8) as applicable.
[164] UCCP, Chapter VIII, p. 18.
[165] UCCP, Chapter VIII, p. 18.

Policy 24: (a) Umatilla County shall protect significant historical and cultural sites from land use activities which diminish their value as historical resources….[166]

Policy 26: The County shall cooperate with the Tribe, Oregon State Historic… Preservation Office, and others involved in… identifying and protecting Indian cultural areas and archeological sites.[167]

The applicants addressed the potential impacts of the proposed Stateline 3 facilities on historic, cultural and archaeological resources in Exhibit S of the amendment request. The site certificate conditions that are related to the Council's Historic, Cultural and Archaeological Resources Standard are discussed below beginning at page 113.

Under the definition in OAR 345-001-0010, SHPO is a reviewing agency, and SHPO has received a copy of the amendment request. SHPO has reviewed the application and has made no recommendations to the Department regarding Stateline 3.

Policy 26 is related to the finding that the Umatilla Tribes are concerned about the protection of archaeological and cultural sites in the County. The Department identified the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) as a reviewing agency, and the CTUIR have received a copy of the amendment request. CTUIR archaeologists conducted the 2008 on-site survey for historic, cultural and archaeological resources within the Stateline 3 site boundary.[168]

Policy 37: The County shall ensure compatible interim uses provided through Development Ordinance standards, and where applicable consider agriculturally designated land as open space for appropriate and eventual resource or energy facilities use.

This policy is related to a finding that "areas specifically set aside for natural resource exploitation, future development of reservoirs, energy generation and transmission facilities, and industry" would "lower the cost of eventual use, as compared to allowing incompatible development on the same lands before such eventual use." The County did not identify any ordinance standards that "ensure compatible interim uses" of lands "set aside" for the "eventual uses" described in the finding. The policy, nevertheless, provides that the County "where applicable" considers agriculturally designated land appropriate for "energy facilities use."

Policy 38:

(a) The County shall encourage mapping of future aggregate sites, ensure their protection from conflicting adjacent land uses, and required reclamation plans.

(b) Aggregate and mineral exploration, extraction, and reclamation shall be conducted in conformance with the regulations of the Department of Geology and Mineral Industries.

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[166] UCCP, Chapter VIII, p. 19.
[167] UCCP, Chapter VIII, p. 20.
[168] Revised Request for Amendment #4, Exhibit S, p. 3.

(c) The County Development Ordinance shall include conditional use standards, and other provisions to limit or mitigate conflicting uses between aggregate sites and surrounding land uses.[169]

Policy 39: (a) The County shall strictly enforce state and county development standards pertaining to gravel extraction/processing uses through appropriate agencies; whether new operations or expansions of existing sites….[170]

Gravel for construction of Stateline 3 would be obtained from an existing County-permitted quarry. Stateline 3 includes a temporary batch plant (used for "processing" aggregate) as a related or supporting facility. The County's substantive criteria applicable to the batch plant are discussed above at page 48.

Policy 42: (a) Encourage development of alternative sources of energy.[171]

The proposed Stateline 3 is a wind energy facility. Wind is considered an "alternative source" of energy.

Air, Land and Water Quality

Policy 1: Discharges from existing and future developments shall not exceed applicable federal and state environmental quality standards.[172]

The proposed Stateline 3 facilities would have no air or water pollution emissions during operation. Potential dust emissions during construction would be controlled according to an Erosion and Sediment Control Plan and the NPDES 1200-C permit (Condition 60).

Policy 7: Consider cumulative noise impacts and compatibility of future developments, including the adoption of appropriate mitigating requirements at plan updates.[173]

The applicants addressed the potential noise impacts of the proposed Stateline 3 facilities in Exhibit X of the amendment request. As discussed below at page 118, State noise control regulations apply to the facility. Subject to the site certificate conditions, the Stateline 3 facilities would comply with the applicable noise limits.

Policy 8: Recognize that protection of existing wells has priority over development proposals requiring additional subsurface sewage disposal.[174]

The Stateline 3 facilities would include a new on-site septic system located at the proposed O&M facility. The system would be designed for capacity of less than 2,500 gallons per day (Condition 129).[175]

[169] UCCP, Chapter VIII, p. 23-24.
[170] UCCP, Chapter VIII, p. 24.
[171] UCCP, Chapter VIII, p. 27.
[172] UCCP, Chapter IX, p. 1.
[173] UCCP, Chapter IX, p. 2.
[174] UCCP, Chapter IX, p. 2
[175] Revised Request for Amendment #4, Exhibit E, p. 5.

Natural Hazards

Policy 1: The county will endeavor, through appropriate regulations and cooperation with applicable governmental agencies, to protect life and property from natural hazards and disasters found to exist in Umatilla County.[176]

Policy 4: Potentially hazardous major developments (e.g. power plants) must address earthquake hazard possibilities.[177]

This policy is related to the finding that "flooding is the major hazard potentially dangerous to life and property" in the County. The proposed Stateline 3 facilities area not located in areas likely to flood. The applicants addressed seismic hazards (including earthquakes) and non-seismic geological hazards in Exhibit H of the amendment request. The Council's Structural Standard, which addresses the risk to public safety from such hazards, is discussed below beginning at page 112.

Recreational Needs

Policy 1: Encourage and work with local, state, federal agencies and private enterprise to provide recreational areas and opportunities to citizens and visitors to the County.[178]

The proposed Stateline 3 facilities are located on private land and not within an established recreational area. The applicants addressed the potential impact of Stateline 3 on recreational opportunities in Exhibit T of the amendment request. For the reasons discussed below at page 95, the proposed Stateline 3 facilities would comply with the Council's Recreation Standard.

Economy of the County

Policy 1: Encourage diversification within existing and potential resource-based industries.[179]

The proposed Stateline 3 wind power generation facility would diversify the County's agriculture-based economy.

Policy 4: Participate in selected economic development programs and projects applicable to the County's desired growth.[180]

This policy is related to the finding that "regional, state and federal programs aid in the development of local economies." The County has not identified any "selected economic development programs" that are applicable. The applicants are private developers, and the proposed Stateline 3 facilities are not part of a governmental economic development program. The project may be eligible for federal and State tax credits.

Policy 8: Evaluate economic development proposals upon the following: Will the proposal:

a. increase or decrease available supplies?

[176] UCCP, Chapter X, p. 1.
[177] UCCP, Chapter X, p. 2.
[178] UCCP, Chapter XI, p. 1.
[179] UCCP, Chapter XII, p. 2.
[180] UCCP, Chapter XII, p. 2.

b. improve or degrade qualities?

c. balance withdrawal with recharge rates?

d. be a beneficial use?

e. have sufficient quantities available to meet needs of the proposed project and other existing and reasonably anticipated needs?

f. reduce other use opportunities and if so, will the loss be compensated by other equal opportunities?

This policy is related to the finding that "water availabilities are a key resource to future economic growth." Water use during construction and operation of the proposed facility is discussed below at page 124. Water used during operation of the proposed facility would be supplied from a new on-site well and would be limited to no more than 5,000 gallons per day. Revision 84 addresses Condition 130, which would incorporate this restriction. During construction, up to 120,000 gallons per day (a total of up to 8.7 million gallons), would be used.[181] The water would be supplied from the City of Helix under an existing municipal water right or from an existing private well subject to a new limited license. The facility's water use would not adversely affect existing water rights and would not degrade water quality.

Public Facilities and Services

Policy 1: The county will control land development in a timely, orderly, and efficient manner by requiring that public facilities and services be consistent with established levels of rural needs consistent with the level of service requirements level of service requirements listed on pages J-27 and J-28 of the Technical Report. Those needs are identified as follows:

a. Fire protection shall be provided consistent with Policies 8, 9, 10.

b. Police protection shall be provided consistent with Policy 7.

c. Surface Water Drainage – Roadside drainage shall be maintained and plans for drainage shall be required in multiple use areas.

d. Roads shall be maintained or improved to standards adopted by the County Road Department which are consistent with nationally accepted standards that correlate traffic to desired road conditions.[182]

The applicants addressed the potential impacts of the proposed Stateline 3 facilities on fire response and police protection services in Exhibit U of the amendment request. Conditions related to fire and police services are discussed below at pages 114 and 125. Policy 8 provides that the County will "encourage the formation or expansion of rural fire districts in areas designated for non-resource use." This policy is not a standard applicable to siting the proposed Stateline 3 facilities. Policy 9 requires "adequate water supplies for fire fighting as part of significant new developments in rural areas." Policy 10 states that "the County will provide assistance to rural fire districts in their attempts to locate satellite fire

[181] Revised Request for Amendment #4, Exhibit U, p. 19.
[182] UCCP, Chapter XIV, p. 2.

stations closer to rural development." This policy is not a standard applicable to siting the proposed Stateline 3 facilities. The Department has no information from the County indicating that any rural fire district is proposing to establish a satellite fire station closer to the proposed Stateline 3.

The applicants propose to improve existing farm roads and to construct new access roads. Condition 61 includes provisions applicable to road construction and requires that surface drainage continues along natural drainage patterns with minimal diversions through ditches and culverts.

> *Policy 2: Require that domestic water and sewage disposal systems for rural areas be provided and maintained at levels appropriate for rural use only. Rural services are not to be developed to support urban uses.*[183]

The applicants propose to construct an on-site water well and an on-site septic system at the O&M building. These water and sewage systems would be designed to meet the needs of the operations staff of up to eight employees. The applicants do not propose to develop rural services to support urban uses.

> *Policy 9: Require adequate water supplies for fire fighting as part of significant new developments in rural areas in coordination with the appropriate rural fire district.*[184]

Conditions related to fire prevention and response are discussed below at page 125. The applicants have discussed the potential impacts of the facility with the Fire Chief of the Milton-Freewater Rural Fire Department.[185]

> *Policy 19: Where feasible, all utility lines and facilities shall be located on or adjacent to existing public or private rights-of-way so as to avoid dividing existing farm or forest units; and transmission lines should be located within existing corridors as much as possible.*[186]

The proposed Stateline 3 facilities would include an aboveground 230-kV interconnection transmission line. All 34.5-kV collector lines would be installed underground. These transmission lines would be located on private land and would not be located within existing public right of way. Condition 40 requires the certificate holder to make reasonable efforts not to disturb the farming and ranching activities on adjacent lands. The proposed transmission lines would not divide existing farm or forest units.

Transportation

> *Policy 20: The county will review right-of-way acquisitions and proposals for transmission lines and pipelines so as to minimize adverse impacts on the community.*[187]

The proposed Stateline 3 facilities would not require acquisition of right-of-way for the proposed transmission lines. The collector lines and 230-kV interconnection line would be

[183] UCCP, Chapter XIV, p. 3.
[184] UCCP, Chapter XIV, p. 4.
[185] App, Exhibit U, p. 28
[186] UCCP, Chapter XIV, p. 6.
[187] UCCP, Chapter XV, p. 5.

located on private land subject to lease or easement agreements between the certificate holders and the landowner.

Energy Conservation

> *Policy 1: Encourage rehabilitation/weatherization of older structures and the utilization of locally feasible renewable energy resources through use of tax and permit incentives.*[188]

The proposed Stateline 3 wind power generation facility would utilize a "locally feasible renewable energy resource" (wind). The use of local tax incentives to encourage this development is not a standard applicable to siting the proposed Stateline 3 facilities.

Zoning Permit

UCDC Section 152.612(D) provides that an applicant granted a conditional use permit or land use decision must obtain a County zoning permit before beginning construction. UCDC Section 152.616(HHH)(4) provides that prior to beginning construction of a wind power generation facility, the applicant must obtain "all other necessary permits" including a County zoning permit. The County has defined "zoning permit" in UCDC Section 152.003, as follows:

> ***ZONING PERMIT.*** *An official finding that a planned use of a property, as indicted by an application, complies with the requirements of this chapter or meets the special conditions of a variance or conditional use permit (see also DEVELOPMENT PERMIT).*

For the reasons discussed herein, the Council finds that the proposed Stateline 3 facilities comply with the requirements of the applicable County ordinances, subject to the Goal 3 exception discussed below. The applicable ordinances are included in the UCDC, which is Chapter 152 of the County ordinances.

20-Acre Limitation

UCDC Section 152.616(HHH)(2)(J) provides that if a wind power generation facility "exceeds 20 acres in size, a Goal 3 exception is required as found in OAR 660-033-0130(22)." OAR 660-033-0130 is a State land use regulation that includes a similar 20-acre limitation that applies to a "power generating facility" located on non-high-value farmland as well as a 12-acre limitation that applies if the facility is located on high-value farmland. In January 2009, the Department of Land Conservation and Development amended OAR 660-033-0130 to exclude "wind power generation facilities" from the 12-acre and 20-acre limitations.

ORS 215.710(1) and OAR 660-033-0020(8) define "High Value Farmland" as land "in a tract composed predominantly of soils that are…[either irrigated or not irrigated and] classified prime, unique, Class I or II" by the Natural Resources Conservation Service (NRCS).[189] "Tract" means one or more contiguous lots or parcels in the same ownership.[190] OAR 660-033-0020(1)(a)(A) defines "agricultural land" in Eastern Oregon as NRCS Soil

[188] UCCP, Chapter XVI, p. 1.
[189] ORS 215.710(6) provides that the applicable "soil classes, soil ratings or other soil designations" are those of the NRCS "in its most recent publication for that class, rating or designation before November 4, 1993."
[190] OAR 660-033-0020(10).

Classes I-VI, and so "non-high-value" farmland would be farmland in other than Class I or II. Class VII soils have very severe limitations that make them unsuitable for cultivation.[191]

The SWP is a wind power generation facility. As defined in UCDC Section 152.003, a "wind power generation facility" includes the energy facility (one or more wind turbines) and "their related or supporting facilities." The County has identified the transmission line as a separate use.[192] The area occupied by all Stateline 3 components is shown in Table 4.

Table 4: Area Occupied by the Proposed Stateline 3 Components[193]

Structure	**High Value Farmland** (acres)	**Non-High Value Farmland** (acres)	**Class VII Soils**
Principal Use			
Turbine towers, including pad areas	4.13	0.32	0.13
Meteorological towers[194]	0	0	0
O&M facility area	10	0	0
Access roads	39.32	3.37	.74
Subtotal	*53.45*	*3.69*	*0.87*
Substation[195]	0	0	0
230-kV transmission line structures	0.59	.25	0
Total	**54.04**	**3.94**	**0.87**

The 20-acre limitation on the "size" of a wind power generation facility under UCCD Section 152.616(HHH)(2)(J) does not specify that the limitation applies to farmland and does not distinguish between high-value and non-high-value farmland.[196] As shown in Table 4, the total size of the proposed Stateline 3 facilities is approximately 59 acres and the impact on farmland is approximately 58 acres.

The Council approved the Stateline 1&2 facilities before the County's adoption of UCDC Section 152.616(HHH)(2)(J). Although the 20-acre limitation contained in the ordinance was not in effect, the Council applied the similar limitations contained in OAR 660-033-0130 to both the Stateline 1 and the Stateline 2 phases of construction of the SWP. In the Final Order on the Application, the Council found that the Stateline 1 facilities "would permanently preclude about 31 acres of current or former cropland from farm use."[197] In the

[191] NRCS, "Land Capability Classification," Soil Survey Report of Umatilla County Area (November 1988).
[192] Letter from Carol Johnson, Umatilla County Planning Department, December 18, 2008.
[193] Based on response to RAI K7.
[194] The total area occupied by two meteorological towers would be 0.0005 acres (email from Mike Pappalardo, February 19, 2009.
[195] The substation would take up no additional land because it would be contained within the 10-acre O&M facility area.
[196] The ordinance cross-references OAR 660-033-0130(22), which applies to non-high-value farmland, but it is unlikely that the County would disregard the impact on high-value farmland in applying this ordinance.
[197] *Final Order on the Application* (September 14, 2001), pp. 34-35. This finding underestimated the amount of "farmland" occupied by the facility because it did not include all EFU land potentially available for crop production. Instead, the analysis was limited to land currently cultivated for crops and land enrolled in the CRP program.

Final Order on Amendment #1, the Council found that the Stateline 2 facilities would permanently occupy about 2 acres, excluding the area occupied by facility roads.[198] New access roads for Stateline 2 were estimated to occupy 24 acres.[199] Based on these earlier findings, the Stateline 1&2 components (including new access roads) occupy at least 57 acres of farmland. For both Stateline 1 and Stateline 2, the affected land was assumed to be non-high-value farmland, and the Council applied the 20-acre limitation contained in OAR 660-033-0130(22).

Based on the Council's earlier findings for Stateline 1&2 and adding the estimated area occupied by the new Stateline 3 components, the SWP principal use and access roads would occupy an estimated 116 acres of farmland. The Council finds that the SWP would exceed 20 acres in size if Amendment #4 were approved and, therefore, would not comply with UCDC Section 152.616(HHH)(2)(J).

B. Applicable Statewide Planning Goals

For the reasons discussed above, the SWP (including the changes proposed by the amendment request) would comply with the applicable substantive criteria recommended to the Council by Umatilla County except UCDC Section 152.616(HHH)(2)(J), which limits the size of a wind power generation facility. Because the proposed Stateline 3 facilities do not comply with all applicable local land use criteria, the Council must determine, under ORS 469.504(1)(b)(B), whether the proposed facilities "otherwise comply with the applicable statewide planning goals." For a use located within an EFU zone, the "applicable statewide planning goal" is Goal 3, which is the State's Agricultural Lands goal. As expressed in *Oregon's Statewide Planning Goals and Guidelines*, Goal 3 is:

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

Consistent with Goal 3, Umatilla County has designated the EFU zone to preserve agricultural lands. Under Goal 3, non-farm uses are permitted within a farm use zone as provided under ORS 215.283. To find compliance with ORS 215.283, the Council must determine whether the proposed Stateline 3 facilities are uses that fit within the scope of the uses permitted on EFU land described in ORS 215.283(1), (2) or (3).

The Council finds that the Stateline 3 "principal use" is a "commercial utility facility for the purpose of generating power for public use by sale" that is allowable under ORS 215.283(2)(g). The Council finds that the principal use includes the wind turbines, power

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[198] The Council found that the Stateline 2 access roads were "not part of the principal use" and that when analyzed as a separate use, the access roads did not require a Goal 3 exception (Final Order on Amendment #1, p. 36). In subsequent findings, however, the Council has determined that wind facility access roads are "accessory transportation improvements" and are "subject to the same procedures, standards and requirements applicable to the use to which they are accessory" in accordance with OAR 660-012-0065(4). The area occupied by the roads, therefore, must be included with the area of the "power generation facility" in determining compliance with OAR 660-033-0130. See, for example, *Final Order on the Application for the Klondike III Wind Project* (June 30, 2006), pp. 40-41, and Final Order on the Application for the Shepherds Flat Wind Farm (July 25, 2008), pp. 52-53.

[199] Request for Amendment #1, Table 1, p. 5.

collection system, meteorological towers, control system and O&M facility. For the reasons discussed below at page 74, the Stateline 3 access roads are subject to the standards and requirements applicable to the principal use. The Council finds that the other Stateline 3 components (substation, 230-kV transmission line and temporary batch plant) are allowable on EFU land under other sections of ORS 215.283. Specifically, the Council finds that the substation and the 230-kV transmission line are "utility facilities necessary for public service" that are allowable under ORS 215.283(1)(d) (see discussion at page 75).[200] The temporary batch plant is allowable under 215.283(2)(b)(C), which allows "processing…of aggregate into…portland cement" on EFU land.[201]

ORS 215.283(2)(g) authorizes "commercial utility facilities for the purpose of generating power for public use by sale" on land zoned for exclusive farm use. OAR Chapter 660, Division 33, contains the LCDC administrative rules for implementing the requirements for agricultural land as defined by Goal 3. OAR 660-033-0120 (Table 1) lists the "commercial utility facility" use as a type "R" use ("use may be approved, after required review"). Prior to the effective date of OAR 660-033-0130(37), the standards found in OAR 660-033-0130(5) and (22) applied to wind power facilities proposed to be located on non-high-value farmland and OAR 660-033-0130(5) and (17) applied to such a facility proposed to be located on high-value farmland.

OAR 660-033-0130(37) became effective on January 2, 2009.[202] At the same time, LCDC adopted amendments to OAR 660-033-0120 (Table 1) that added reference to a "wind power generation facility" as a distinct type "R" use. The amendments provided that OAR 660-033-0130(5) and (37) applied to wind power generation facilities. The effect of these amendments was to eliminate the 12-acre and 20-acre restrictions on wind energy facilities that are contained in OAR 660-033-0130(17) and (22) and to impose, instead, new restrictions on wind energy facilities contained in 660-033-0130(37). The applicability of 660-033-0130(5) did not change.

The Department believes that the January 2, 2009, amendments of OAR 660-033-0120 and OAR 660-033-0130 apply to the review of the proposed new Stateline 3 components. Nevertheless, for completeness and in case the Department is later found to be incorrect about the applicability of the amended LCDC rules, an analysis of both the "old" (before the January 2009 amendments) and "new" rules is presented below.

[200] The proposed substation functions to step up the power generated by the Stateline 3 turbines to accommodate interconnection with the regional power grid and ultimately to deliver power to public customers. Treating the substation as a utility facility necessary for public service is consistent with recent Council findings on the Shepherds Flat Wind Farm and the Leaning Juniper II Wind Project. Alternatively, the substation might be considered to be a component of the "commercial utility facility," but the outcome would not change because the "power generation facility" exceeds the acreage limitation with or without the substation.

[201] "Processing" is defined by ORS 517.750(11) as including "crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete located within the operating permit area."

[202] The provision became effective upon filing (OAR 660-033-0160).

The Old Rules

OAR 660-033-0130(5)

> *(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:*
>
> *(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
>
> *(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

OAR 660-033-0130(5) cross-references ORS 215.296, which contains standards for approval for a use allowed under ORS 215.283(2) that are substantively identical to OAR 660-033-0130(5)(a) and (b). These same approval standards are incorporated in the Umatilla County zoning ordinance, UCDC Section 152.061, discussed above at page 33. In the discussion of the ordinance, the Council finds that the proposed Stateline 3 facilities would not force a significant change in accepted farm practices on surrounding farmland and would not significantly increase the cost of accepted farm practices. Because the same approval standards are contained in the land use statute and LCDC rule, the Council finds that the principal use and access roads would comply with ORS 215.296 and OAR 660-033-0130(5), for the same reasons given in the discussion of UCDC Section 152.061.

OAR 660-033-0130(17)

> *(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.*

OAR 660-033-0130(22)

> *(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 004.*

Under OAR 660-033-0120, the 12-acre limitation described in OAR 660-033-0130(17) applies to components of a power generation facility located on high-value farmland. The 20-acre limitation described in OAR 660-033-0130(22) applies on non-high-value farmland. As shown in Table 4 at page 64 above, the proposed Stateline 3 principal use and access roads would occupy approximately 54 acres of high-value farmland. In addition, they would occupy approximately 4 acres of non-high-value farmland. The Stateline 3 components increase the overall size of the SWP. As a whole, the SWP facility would occupy an estimated 54 acres of high-value and 61 acres of non-high-value farmland, if the Council approves Amendment #4.[203] The Council finds that the SWP principal use and access roads, as expanded by Amendment #4, would not comply with OAR 660-033-0130(17) or (22) because they would preclude more than 12 acres of high-value farmland and more than 20 acres of non-high-value farmland from use "as a commercial agricultural enterprise." Based on this finding, the SWP, with the expansion allowed by Amendment #4, would not comply with the rules implementing Goal 3. We discuss an exception to Goal 3 below at page 77.

[203] See discussion above following Table 4.

The New Rules

Under the amended LCDC rules that became effective on January 2, 2009, OAR 660-033-0130(5) and (37) apply to the siting of a wind power generating facility. The analysis of OAR 660-033-0130(5) has already been addressed above at page 67.

OAR 660-033-0130(37) defines a "wind power generating facility" and provides criteria for the approval of a wind power generating facility sited on farmland. The Council finds that the Stateline 3 components fit entirely within the definition of "wind power generating facility" in OAR 660-033-0130(37). The Council finds that the Stateline 3 components meet the approval criteria for a wind power generating facility, for the reasons discussed below.

OAR 660-033-0130(37)

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

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

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

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only

consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

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

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

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

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

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

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

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified

individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

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

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

OAR 660-033-0130(37)(a) provides criteria for locating a wind power generating facility on high-value farmland soils. The rule references ORS 195.300(10) for the definition of "high-value farmland soils." ORS 195.300(10), in turn, references ORS 215.710, which defines "High Value Farmland" as land "in a tract composed predominantly of soils that are…[either irrigated or not irrigated and] classified prime, unique, Class I or II" by the NRCS.[204] "Tract" means one or more contiguous lots or parcels in the same ownership.[205] As shown in Table 4 at page 64 above, the proposed Stateline 3 principal use and access roads would occupy approximately 54 acres of high-value farmland.

Reasonable alternatives

OAR 660-033-0130(37)(a)(A) requires the applicants to consider "reasonable alternatives" to locating the facility, or components of the facility, on high-value farmland. The applicants must "show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly." In the case of access roads and turbine strings, the applicants must show that these components must be placed on high-value farmland soils "to achieve a reasonably direct route." To demonstrate the necessity of using high-value farmland for the facility to "function properly" or for a road or turbine string to "achieve a reasonably direct route," the applicants must consider the factors listed in subsections (i) through (iii).

Thus, the rule first requires the applicants to determine whether "reasonable alternatives" exist on non-high-value soils, and then to analyze whether the facility could "function properly" in an alternative location. The rule does not, however, contain specific factors to be considered to determine whether a given alternative is "reasonable."

The first consideration in determining whether an alternate location on non-high-value farmland is "reasonable" is, of course, whether there is a substantially similar wind resource comparable to the wind resource at the proposed site. If there is not, the alternative cannot be determined to be reasonable.

In addition, whether an alternative proposed for analysis is "reasonable" will depend on the design of the proposed facility. In this case, the proposed land use is an expansion of an existing wind power generating facility (approved before the new rules were adopted by LCDC). The proposed Stateline 3 components are part of an amendment to a site certificate

[204] ORS 215.710(6) provides that the applicable "soil classes, soil ratings or other soil designations" are those of the NRCS "in its most recent publication for that class, rating or designation before November 4, 1993."
[205] OAR 660-033-0020(10).

for an operating energy facility and would expand the boundaries of that facility. It would be unreasonable to require the applicants to locate the facility expansion at a distant location remote from the existing facility components. The Council finds that, for an amendment that enlarges the site of an existing facility, a "reasonable alternative" must be on non-high-value farmland where there is a substantially similar wind resource, and must be either be contiguous with, or sufficiently close to, the existing facility to ensure that operation of the entire facility is practicable. If both prongs of this test cannot be satisfied, there is no "reasonable alternative," and the analysis ends there. The facility must be located on high-value farmland for the facility (or a component of the facility) to function properly.

If there is sufficient non-high-value farmland close to the existing facility that might serve as an alternate location for the expansion, then the applicants may demonstrate that the expansion must, nevertheless, be located on high-value farmland for reasons of: (i) technical and engineering feasibility; (ii) availability of existing rights of way; and (iii) the long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites.

OAR 660-033-0130(37)(a)(B) more fully defines the environmental, economic and social analysis required by OAR 660-033-0130(37)(a)(A)(iii). OAR 660-033-0130(37)(a)(C) provides that costs may be considered in the analysis. OAR 660-033-0130(a)(D) imposes an obligation on the owner of a wind power facility to restore any farmland "damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility."

The applicants provided information about the soil characteristics that exist within and near the proposed Stateline 3 site boundary.[206] Soil maps of the area, based on data from the NRCS, show a mosaic of soil types. A complex pattern of individual soil types in which high-value farmland is interspersed with non-high-value farmland is characteristic of northern Umatilla County (Township 5N Ranges 33E and 34E and Township 6N, Ranges 32E and 33E) where the SWP is located. In response to the Department's request for further analysis of the availability of sufficient non-high-value farmland in the vicinity of the existing Stateline 1&2 components of the SWP, the applicants provided a map showing the site boundary of the proposed Stateline 3 components and the constraints presented by the high-value farmland soils in the area.[207] Finding a "reasonable alternative" for the Stateline 3 components is further constrained by the areas occupied by the existing Combine Hills and Vansycle Ridge wind projects and by the land leased or otherwise committed to the proposed Helix Wind Power Facility that is currently under Council review. The applicants point out that they are "hemmed in" to the northeast and west by these other wind energy projects and that to the south, east and west, "there is more high-value farmland on increasingly challenging terrain."[208]

In addition, the applicants note that the proposed location of the Stateline 3 components allows efficient use of existing transmission infrastructure and the use, in common with Stateline 1&2, of existing points of interconnection with the regional power grid in Washington. The applicants have negotiated transmission service at the proposed points of interconnection, but they have "no assurance that firm transmission would be

[206] Revised Request for Amendment #4, Exhibit I, Figures I-1, I-1a, I-1b, I-1c and I-1d.
[207] Email from Mike Pappalardo, February 17, 2009.
[208] "Responses Concerning OAR 660-033-0130(37)" (email from Mike Pappalardo, February 17, 2009).

available from some new point of interconnection at a new, different Stateline 3 grid-interconnection substation."

The figures provided by the applicants depict the proposed site boundary of the Stateline 3 components. The boundary defines an area of approximately 7,055 acres that is the area required to design, construct and operate the proposed wind energy facility that would include up to 67 wind turbine towers and related and supporting facilities and infrastructure. Although the final footprint of the proposed facility would occupy less than 60 acres, a larger area is necessary to allow sufficient flexibility for micrositing considerations in the final design of the facility, to allow sufficient additional area for laydown areas and other construction zones and to avoid adverse impacts to habitat that is essential or important for wildlife.

Given the diverse mosaic of soil types in the area of northern Umatilla County that is near or contiguous with the existing SWP and potentially available for locating the proposed Stateline 3 components, the Council finds the applicants have considered whether "reasonable alternatives" exist as required by OAR 660-033-0130(37)(a)(A). Based on the information provided by the applicants, the use of high-value farmland soils for the proposed expansion of the wind power generation facility is unavoidable. There is no "reasonable alternative" to locating components of the proposed facility entirely or partially on high-value farmland soils.

Any alternative configuration of the Stateline 3 components is likely to affect high-value farmland to some extent. The anticipated environmental, economic, social and energy consequences of an alternative facility configuration would be substantially the same as the proposed configuration. The Council finds that reasonable alternatives to siting the wind power generating facility on high-value farmland have been considered, that siting the facility, or a component thereof, on high-value farmland soils is necessary for the facility to function properly and that siting portions of the road system and turbine strings on high-value farmland is necessary to achieve a reasonably direct route.

Environmental, Economic, Social and Energy Consequences

Under OAR 660-033-0130(37)(a)(B), the applicants must show that "the long term environmental, economic, social and energy consequences" of the facility or its components, taking mitigation into account, "are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils." The test is similar to that required under ORS 459.504(2)(c)(B) when the Council determines whether to grant a "reasons" exception to a statewide planning goal: "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." The environmental, economic, social and energy consequences of the proposed Stateline 3 components are discussed below at page 79 as part of the Goal 3 exception analysis. For the reasons addressed there, the Council finds that the "consequences" of siting the facility on high-value farmland are not significantly more adverse than would typically result from locating the components on non-high-value farmland

Siting the wind facility components on high value farmland is likely to be beneficial to the landowners. The current and proposed site certificate conditions contain mitigation

measures designed to minimize any adverse impacts related to the siting of the facility on high-value farmland. Though the facility components might affect some agricultural routines of the landowner, the wind turbines will, along with other benefits, provide a significant source of additional, stable income to the landowner. Expansion of wind energy generation will take advantage of a clean and available energy source uniquely suited to the large, open areas often associated with high-value farmland. Therefore, the environmental, economic, social and energy effects of locating the Stateline 3 components on high-value farmland, when mitigation measures are taken into account, would not be significantly more adverse than if the facility were located on non-high-value farmland.

Restoration

OAR 660-033-0130(37)(a)(D) requires the owner of a wind facility to restore agricultural land damaged by the wind power facility. Condition 65 requires the certificate holder to restore all areas disturbed by construction, including farmland, according to the *Revegetation Plan*. Revision 45 incorporates the Department's recommended revisions of the Revegetation Plan (Attachment B to the Proposed Order). The Council finds that the requirements of Condition 65 satisfy the obligation contained in OAR 660-033-0130(37)(a)(D).

Additional Criteria

OAR 660-033-0130(37)(a)(E) requires the applicants to demonstrate that the criteria of OAR 660-033-0130(37)(b) are satisfied when determining whether a facility may be sited on high-value farmland soils.

Arable and Nonarable Lands

Subsections (b), (c) and (d) of OAR 660-033-0130(37) provide additional criteria for wind power generation facilities located on "arable" or "nonarable" land. Subsection (b) defines "arable land" as "lands that are cultivated or suitable for cultivation, including high-value farmland soils" and provides criteria for locating a facility on arable land. Subsection (c) defines "nonarable land" as land "not suitable for cultivation" and identifies the criteria applicable on nonarable land. Subsection (d) provides that when a proposed wind power generation facility is located on a combination of arable and nonarable lands, then the criteria in subsection (b) apply to the entire facility. The proposed Stateline 3 components would be located on combination of arable and nonarable lands, as shown on Table 8 herein. Accordingly, the criteria in subsection (b) apply.

Impacts on Agricultural Operations

OAR 660-033-0130(37)(b)(A) provides that the proposed wind power facility must not "create unnecessary negative impacts on agricultural operations conducted on the subject property." This requirement is substantially similar to the approval standards in the Umatilla County zoning ordinance, UCDC Section 152.061, discussed above at page 33. For the reasons discussed there and subject to the site certificate conditions discussed herein, the Council finds that the Stateline 3 components will not result in unnecessary negative impacts on agricultural operations.

Soil Erosion and Compaction

OAR 660-033-0130(37)(b)(B) provides that the proposed wind power facility must not result in unnecessary soil erosion. OAR 660-033-0130(37)(b)(C) provides that facility construction or maintenance activities must not result in unnecessary soil compaction. Potential adverse impacts to soils and measures to avoid or control soil erosion and compaction are addressed by the Council's Soil Protection Standard, discussed below at page 80. For the reasons discussed there and subject to site certificate conditions, the Council finds that construction and operation of the Stateline 3 components would not result in unnecessary soil erosion.

Weed Control

OAR 660-033-0130(37)(b)(D) provides that construction or maintenance activities must not result in the "unabated introduction or spread of noxious weeds and other undesirable weeds species." Weed control is addressed by UCDC Section 152.616(HHH), discussed above at page 40. Specifically, UCDC Section 152.616(HHH)(2)(H) requires a weed control plan. Condition 68 addresses construction impacts to agricultural land and requires the certificate holder to implement a *Revegetation Plan*, which includes weed control measures. Condition 68 requires control of noxious weeds in areas disturbed by construction. Condition 30 requires the certificate holder to implement a weed control program during the life of the facility. Condition 92 addresses weed control during operation. The Council finds that construction and operation of the Stateline 3 components would not result in unabated introduction of spread of weeds on farmland.

The Access Roads

The proposed access roads are part of the "wind power generation facility" as defined by OAR 660-033-0130(37), if the new rules are applicable, and would not require separate analysis. If the old rules apply, then the proposed Stateline 3 access roads are allowable on EFU land under ORS 215.283(3). ORS 215.283(3) allows "roads, highways and other transportation facilities and improvements" that are not otherwise allowed under paragraphs (1) and (2) of ORS 215.283 to be established in an EFU zone, subject to:

> *(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or*
>
> *(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.*

The subparagraphs are conjoined by "or" and so either (a) or (b) applies. In this case, subparagraph (b) applies because the Stateline 3 access roads are a use identified by the LCDC. OAR 660-033-0120 identifies uses authorized on agricultural lands. OAR 660-033-0120 (Table 1) lists "transportation improvements on rural lands allowed by OAR 660-012-0065" as a type "R" use ("use may be approved, after required review"). OAR 660-012-0065(2)(d) defines "accessory transportation improvements" as "transportation improvements

that are incidental to a land use to provide safe and efficient access to the use."[209] The proposed Stateline 3 access roads are incidental to the principal use and would provide safe and efficient access to the facility.

Under OAR 660-012-0065(3)(a), transportation improvements for a use that is conditionally allowed by ORS 215.283 are consistent with Goal 3, subject to the requirements of OAR 660-012-0065.[210] The requirements of OAR 660-012-0065(4) are applicable:

> *(4) Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of this rule shall be subject to the same procedures, standards and requirements applicable to the use to which they are accessory.*

The rule language applies specifically to accessory transportation improvements "required as a condition of development." Because the Stateline 3 access roads are necessary for the operation and maintenance of the wind energy facility, they are a necessary condition of the development of the commercial utility facility. Accordingly, the access roads are subject to the standards and requirements applicable to the principal use. We have discussed the standards applicable to the principal use above, beginning at page 67.

Substation and Interconnection Line

The proposed Stateline 3 substation is necessary to convert the voltage from the 34.5-kV collector system to 230 kV so that electricity generated by the energy facility can be transmitted efficiently over the transmission interconnection line to public customers. The proposed substation and 230-kV interconnection line are part of the "wind power generation facility" as defined by OAR 660-033-0130(37), if the new rules are applicable, and would not require separate analysis. If the old rules apply, then the substation and the 230-kV transmission line are within the scope of ORS 215.283(1)(d), which allows "utility facilities necessary for public service" on EFU land subject to the provisions of ORS 215.275.

> ***215.275 Utility facilities necessary for public service; criteria; mitigating impact of facility.*** *(1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (1)(d) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.*
>
> *(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:*
>
> *(a) Technical and engineering feasibility;*
>
> *(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for*

[209] OAR 660-012-0065(2)(a) defines "access roads" as "low volume public roads that principally provide access to property or as specified in an acknowledged comprehensive plan." The proposed Stateline 3 turbine string access roads are not "access roads" under this definition because they are not public roads.
[210] The principal Stateline 3 use is a "commercial utility facility for the purpose of generating power for public use by sale" and is conditionally allowed on EFU land under ORS 215.283(2)(g).

exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(d) or 215.283 (1)(d) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(d) or 215.283 (1)(d) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

ORS 215.275(2) lists factors for deciding whether a utility facility is "necessary for public service." The factors are substantially the same as the factors listed in UCDC Section 152.617(II)(7), discussed above beginning at page 48. The Council finds that the proposed 230-kV transmission line must be sited in an exclusive farm use zone for the same reasons given in the discussion of UCDC Section 152.617(II)(7).

Likewise, the Stateline 3 substation must be located in an EFU zone because there is no non-EFU land near the proposed Stateline 3 wind turbines where the substation could be located. There are no reasonable alternatives to this location. At least three of the factors listed in ORS 215.275(2) apply. "Technical and engineering feasibility" requires that there be a substation to accommodate interconnection of the lower-voltage power generated by individual Stateline 3 wind turbines with existing Stateline 230-kV transmission line in Washington and ultimately to the PacifiCorp system. It is not feasible or technically possible to interconnect with the regional transmission grid without a substation to step-up the voltage.

Second, the proposed substation is "locationally dependent." It must be located in proximity to the proposed wind turbines, because that is where the power would be generated. It must be located reasonably near existing regional transmission lines so that the power can be transmitted to customers. Third, there are no "available urban and nonresource lands" on which to locate the substation where it could serve its purpose. The turbine area (located where an adequate wind resource for commercial power generation exits) is located on EFU land. For these reasons, location of the substation on EFU land is "necessary for public service." The Council finds that the substation is allowed under ORS 215.283(1)(d) subject to the other applicable provisions of ORS 215.275.

ORS 215.275(3) provides that the costs associated with any of the factors listed in subsection (2) may be considered but may not be the only consideration in determining that a utility facility is necessary for public service. The Council finds that the substation and the 230-kV transmission line are utility facilities necessary for public service without consideration of the costs associated with the factors listed in ORS 215.275(2).

ORS 215.275(4) requires that the owner of a utility facility approved under ORS 215.283(1)(d) be responsible for restoring agricultural land and associated improvements to their former condition if they are damaged or disturbed by the siting, maintenance, repair or reconstruction of the facility. The certificate holders would be responsible for restoring all areas of agricultural land temporarily disturbed during construction, maintenance or repair of the substation and the 230-kV transmission line (Conditions 68).

ORS 215.275(5) requires the imposition of "clear and objective conditions" on siting a utility facility under 215.283(1)(d) "to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands." These objectives are substantially identical to the approval standards incorporated in UCDC Section 152.061, discussed above at page 33. The Council applies the site certificate conditions as described in the discussion of UCDC Section 152.061 to mitigate and minimize potential impacts of the proposed Stateline 3 facilities on farm practices .

C. Goal 3 Exception

As discussed above at page 67, if the Council approves Amendment #4, the SWP would occupy more than 12 acres of high-value farmland and more than 20 acres of non-high-value farmland. If the old rules apply, the facility would not comply with OAR 660-033-0130(17) and (22). Therefore, to find compliance under ORS 469.504(1)(b)(B), the Council must decide whether an exception to Goal 3 is justified under ORS 469.504(2). Alternatively, if the new rules apply and Stateline 3 were found not to comply with OAR 660-033-0130(37), then the Council must make the same determination regarding a Goal 3 exception.

ORS 469.504(2)(c) sets out the requirements that must be met for the Council to take an exception to a statewide planning goal, as follows:

> *(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land*

Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

* * *

(c) The following standards are met:

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

(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; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

The Council makes the findings discussed below and concludes that the standards for an exception to Goal 3 under ORS 469.504(2)(c) are met.

Reasons Supporting an Exception

The state policy embodied in Goal 3 is the preservation and maintenance of agricultural land for farm use. The following reasons support an exception to Goal 3.

First, although the proposed principal use and access roads would occupy approximately 59 acres of EFU farmland, the Stateline 3 components would occupy approximately 1-percent of the farmland within the site boundary that is currently in agricultural use.[211] It is significant to note that the wind facility structures would not occupy a single, contiguous area within which no farming activities could occur. Rather, the spacing of turbines and turbine strings would allow farm use to continue efficiently on most of the land currently used for grazing and cultivation of crops.

Second, facility access roads would be available to landowners for use in farm operations. As shown in Table 4, of the 54 acres of high-value farmland occupied by the Stateline 3 components, the access roads would occupy approximately 39 acres. The roads would be available to the landowners for farming or ranching uses. Facility access roads would be the minimum size necessary for safe operation and would be located to minimize conflict with farm uses on surrounding land (Condition 44).

Third, approval of the proposed Stateline 3 components furthers the state policy embodied in Goal 13 (Energy Conservation). The Guidelines for implementing Goal 13 direct that land use planning utilize renewable energy sources, including wind, "whenever possible." EFU land is particularly well suited to the utilization of wind energy, which requires open land with unobstructed access to consistently strong winds. The areas within Umatilla County that have sufficient open space and strong winds are within EFU zones.

Fourth, the use of farmland for the location of the facility provides efficient access to the regional transmission system. Less than 13 miles of new transmission line would be

[211] There are approximately 4,576 of "Dry Agriculture" habitat within the site boundary and Stateline 3 would occupy less than 50 acres of this land (Response to RAI, Exhibit P, Table P-5).

needed in Oregon to connect the proposed Stateline 3 components to existing regional power lines.[212]

Environmental, Economic, Social and Energy Consequences

The Council's standards address the environmental consequences of the SWP with the proposed Stateline 3 components. In our discussion of each of the standards, we identify the potential adverse impacts of the proposed Stateline 3 facilities and explain how those impacts would be mitigated. We discuss impacts to soils at page 80; to protected areas at page 83; to scenic resources at page 88; to threatened and endangered species at page 103; to wildlife habitat at page 105; to ambient noise levels at page 118; to waters of the state at page 123; and to groundwater at page 124. The facility would have no emissions that would adversely affect air or water quality. Upon retirement of the facility, the site would be restored to a useful, non-hazardous condition (see discussion of the Council's Retirement and Financial Assurance Standard at page 15).

The proposed Stateline 3 components would have beneficial economic consequences and no significant adverse economic consequences. Stateline 3 would offer local employment opportunities by providing up to 150 jobs during construction and up to eight jobs during operation.[213] Annual lease payments in the wind facility lease area would supplement landowner income from other farm operations without significantly reducing the land base available for farming practices. In addition, the proposed facility would provide property tax revenue to Umatilla County.

The proposed Stateline 3 components would not have significant adverse social consequences. The proposed expansion of the SWP would not cause any significant adverse impact on the ability of communities in the local area to provide services such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation and traffic safety (see discussion of site certificate conditions related to the Council's Public Services Standard at page 114). The site certificate would include conditions to avoid adverse impact to historic, cultural and archaeological resources (see discussion at page 113). The proposed Stateline 3 facilities would have no adverse impact on important recreational opportunities in the local area (see discussion of the Council's Recreation Standard at page 95). We address public safety issues related to the proposed facility at page 96 (Public Health and Safety Standards for Wind Energy Facilities), page 101 (Siting Standards for Transmission Lines), page 112 (Structural Standard) and page 125 (Public Health and Safety). During construction and operation of Stateline 3, the certificate holders would minimize the generation of solid waste and wastewater and would properly dispose or recycle waste materials (see discussion at page 117).

The energy consequences of adding the proposed Stateline 3 components to the SWP would be the additional generation of up to 33.5 MW of electricity (average electric generating capacity) that would become available to meet local and regional energy needs. The expansion of the SWP would increase the overall average electric generating capacity of the facility to 74.5 MW. The proposed Stateline 3 turbines would generate electricity from a

[212] An additional 3.1 miles of 230-kV transmission line would be built in Washington.
[213] Revised Request for Amendment #4, Exhibit U, p. 9.

renewable source (wind), which furthers the State's energy policy "to develop permanently sustainable energy resources" (ORS 469.010).

In 2007, the Oregon Legislature enacted SB 838. This legislation established a "Renewable Portfolio Standard" (RPS) under which the State's largest utilities must provide 25 percent of their retail sales of electricity from renewable sources of energy by 2025. The generation of an additional 33.5 MW of electricity from the proposed Stateline 3 wind turbines would be a significant new renewable energy source that might help Oregon utilities meet the RPS goals.

Compatibility with Other Adjacent Uses

Adjacent uses are primarily dryland wheat farming.[214] The Stateline 3 components are compatible with farm uses for the reasons discussed above in reference to UCDC Section 152.061 at page 33. Expansion of the SWP to add the Stateline 3 components would not force a significant change in accepted farm practices on surrounding lands and would not significantly increase the costs of farm practices. The directly affected landowners are willing to enter into land leases to allow Stateline 3 to be built. In return, the landowners would receive annual lease payments. Lease payments would provide a stable, supplemental income source that would help maintain the land in farm use by increasing the economic viability of the landowners' farm operations.

Conclusions of Law

Based on the foregoing findings of fact, reasoning, proposed conditions and conclusions, the Council finds that the SWP with the proposed Stateline 3 components would comply with all applicable substantive criteria from Umatilla County except UCCD Section 152.616(HHH)(2)(J). Accordingly, the Council must proceed with the land use analysis under ORS 469.504(1)(b)(B).

If the old rules apply, the Council finds that the proposed expansion of the SWP as described in the amendment request does not comply with OAR 660-033-0130(22), if applicable, and therefore does not comply with the applicable statewide planning goal (Goal 3). If the new rules apply, the Council finds that the proposed expansion of the SWP complies with OAR 660-033-0130(37) and otherwise complies with all applicable statewide planning goals.[215] The Council finds that an exception to Goal 3 is justified under ORS 469.504(2)(c).

Based on these findings and the site certificate conditions described herein, the Council concludes that the SWP would comply with the Land Use Standard if Amendment #4 were approved.

(b) Soil Protection

OAR 345-022-0022

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and

[214] Revised Request for Amendment #4, Exhibit K, p. 12.

[215] If the new rules apply and Stateline 3 were found not to comply with OAR 660-033-0130(37), then an exception to Goal 3 would be justified for the reasons discussed herein.

chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1, the Council found that the design, construction and operation of the Stateline 1&2 components of the SWP, taking into account mitigation and subject to the conditions stated in the orders, would not likely cause a significant adverse impact to soils. Amendment #4 would change the site boundary of the SWP. The Council must decide, therefore, whether the design, construction and operation of the proposed Stateline 3 components would have a significant adverse impact to soils.

The applicants provided information about soil impacts in Exhibit I of the amendment request. As shown in Table 8 herein, construction activities for Stateline 3 would potentially affect approximately 327 acres of land, and the Stateline 3 components would permanently occupy approximately 59 acres.

Adverse impacts to soils can affect crop production on adjacent agricultural lands, native vegetation, fish and wildlife habitat, and water quality. Construction and operation of the Stateline 3 components could have soil impacts such as erosion, compaction and chemical spills. Because a wind facility does not have a cooling tower or liquid effluent, there is no potential for salt deposition or land application of liquid effluent. Small amounts of lubricant and herbicide for weed control would be used, but due to the quantities used, there is no potential for significant spills.

A. Potential Impacts During Construction

Wind and water erosion may occur during construction of Stateline 3. Construction would include removal of surface vegetation, grading and leveling operations. Movement of construction cranes and other heavy equipment would temporarily increase the potential for soil erosion. Installation of underground communications and power collection systems would require trenching that could expose the affected areas to increased erosion risk.

Heavy equipment movement, car and truck traffic, and component laydown during construction could cause soil compaction and dust emissions. Transportation and dumping of gravel and processing aggregate for concrete mixing could cause significant temporary dust emissions. Soil compaction can reduce agricultural productivity or interfere with revegetation. Dust emissions can adversely affect air quality. During construction, there is a risk of chemical spills from fuels, oils and grease associated with operation of construction equipment.

B. Potential Impacts During Operation

Operation of the Stateline 3 components would be similar to the operation of Stateline 1&2. Operation of the SWP facility would have little impact on soils. Precipitation could result in surface water collecting on structures and on concrete or gravel surfaces. Drainage from those areas could erode nearby soils. In addition, repair or maintenance of underground communications or power collection lines could expose soils to increased erosion. Operation of equipment and vehicular traffic for maintenance could result in soil compaction and dust emissions. Small amounts of chemicals such as lubricating oils and cleaners for the turbines

and herbicides for weed control would be used at the facility site and present a risk to soils from accidental spills.

C. Control and Impact Mitigation Measures

The Council confirms that Condition 60 applies to Stateline 3. Condition 60 requires that all construction would be subject to the requirements of the NPDES Storm Water Discharge General Permit #1200-C and associated Erosion and Sediment Control Plan. An Erosion and Sediment Control Plan describes best management practices for erosion and sediment control, spill prevention and response procedures, regular maintenance for vehicles and equipment, employee training on spill prevention and proper disposal procedures. The applicants described typical "best management practices" that would be implemented to control erosion during construction of Stateline 3, including use of hay bales, silt fences, revegetation, sediment-control basins, traps in drainages, revegetation and other erosion control practices.[216]

The Council confirms that Conditions 61 and 92 apply to Stateline 3. These conditions list measures that would be implemented during construction and operation to reduce or avoid soil erosion and compaction. Condition 61 includes using water for dust suppression and covering roads and turbine pads with gravel immediately following exposures to limit wind and water erosion.

Hazardous materials that could be used on-site during construction and operation include lubricating oils, cleaners, gasoline and pesticides or herbicides.[217] Condition 32 requires the certificate holder to use hazardous materials in a manner that is protective of human health and the environment to comply with all applicable local, state, and federal environmental laws and regulations.[218] The condition requires the certificate holder to reduce the risk of accidental releases of hazardous materials through the proper containment of these substances during transportation and use on the site. The Council confirms that Condition 32 applies to Stateline 3.

The Council confirms that Conditions 20, 65 and 68 apply to Stateline 3. These conditions require the restoration of temporarily disturbed areas upon completion of construction as described in the *Revegetation Plan* (Attachment B). The Department's recommended modifications to the *Revegetation Plan* are incorporated in Revision 45.

Conclusions of Law

For the reasons discussed above, the Council finds that the design, construction and operation of the Stateline 3 components, taking mitigation into account, are not likely to result in a significant adverse impact to soils. Based on these findings and the site certificate conditions described herein, the Council concludes the SWP would comply with the Council's Soil Protection Standard if Amendment #4 were approved.

[216] Revised Request for Amendment #4, Exhibit V, p. 2.
[217] Revised Request for Amendment #4, Exhibit G, Table G-1, p. 2.
[218] For example, federal law (40 CFR 112) requires the operators of facilities that store quantities of oil and engage in refueling operations onsite to develop and implement a Spill Prevention Control and Countermeasure Plan.

(c) Protected Areas

OAR 345-022-0040

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria

Mid-Columbia Agriculture Research and Extension Center, Hood River

Agriculture Research and Extension Center, Hermiston

Columbia Basin Agriculture Research Center, Pendleton

Columbia Basin Agriculture Research Center, Moro

North Willamette Research and Extension Center, Aurora

East Oregon Agriculture Research Center, Union

Malheur Experiment Station, Ontario

Eastern Oregon Agriculture Research Center, Burns

Eastern Oregon Agriculture Research Center, Squaw Butte

Central Oregon Experiment Station, Madras

Central Oregon Experiment Station, Powell Butte

Central Oregon Experiment Station, Redmond

Central Station, Corvallis

Coastal Oregon Marine Experiment Station, Newport

Southern Oregon Experiment Station, Medford

Klamath Experiment Station, Klamath Falls;

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

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

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

* * *

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1 the Council found that the design, construction and operation of the Stateline 1&2 components of the SWP, taking mitigation into account and subject to the conditions stated in the orders, were not likely to result in significant adverse impact to protected areas. In the Final Order on

Amendment #2, the Council found that the design, construction and operation of the old Stateline 3 configuration would not result in a significant adverse impact to any protected area. Amendment #4 would change the site boundary of the SWP and authorize the construction of a new Stateline 3 configuration. The Council must decide, therefore, whether the design, construction and operation of the proposed Stateline 3 components would have a significant adverse impact to protected areas.

The applicants provided information about potential impacts to protected areas in Exhibit L of the amendment request. Table 5 shows the protected areas within 20 miles of the Stateline 3 site, a reference to the applicable subparagraph of OAR 345-022-0040(1), the approximate distance from the closest edge of the site boundary, the direction of each protected area from the proposed facility site and the state in which each area is located.[219] Figure L-1 in the amendment request shows the locations of the protected areas in relation to the site boundary.[220] In some cases, as shown by comparing Figure L-1 to Figures C-5a and C-5b, the protected areas are closer to the Stateline 1&2 components of the facility.[221] The Council has previously analyzed the potential adverse impacts of the Stateline 1&2 components and the previous Stateline 3 configuration on these protected areas.[222]

[219] The applicants identified Sacajawea State Park, which is a state park Washington that is not listed as a protected area under OAR 345-022-0040. The applicants also identified the Lewis and Clark National Historical Trail and the Oregon National Historical Trail, which are not parks. The closest segments of these National Historical Trails are approximately 16 miles from the nearest proposed Stateline 3 turbine.
[220] Response to RAI, Exhibit L, Figure L-1.
[221] Response to RAI, Exhibit C, Figures ("Exhibits") C-5a and C-5b, and *Final Order on the Stateline Wind Project* (September 14, 2001), p. 47.
[222] Previous findings did not specifically mention the Juniper Canyon HMU or the Columbia Basin Agricultural Research Center, but the potential adverse impacts of the facility on protected areas at similar distances from the facility have been described.

Table 5: Protected Areas Within 20 Miles

Protected Area	Rule Reference	Distance[223] (Miles)	Direction from Stateline 3	State
McNary National Wildlife Refuge[224]	(d)	13.5	N to NW	WA
Wallula Habitat Management Unit (HMU)	(d)	5.7	N to NW	WA
Juniper Canyon/Stateline HMUs[225]	(d)	10	N to NW	OR and WA
Peninsula HMU	(d)	12.8	N to NW	WA
Two Rivers HMU	(d)	11.4	N to NW	WA
Cold Springs National Wildlife Refuge	(d)	18.8	SW	OR
Whitman Mission National Historic Site	(a)	9.3	NE	WA
Columbia Basin Agricultural Research Center	(m)	17.5	SW	OR
Hat Rock State Park	(h)	19.7	W	OR

A. Noise

Noise generated by operation of the Stateline 3 components would comply with the noise control regulations of the Oregon Department of Environmental Quality (DEQ), and would not result in a significant adverse impact to protected areas. At the closest protected area (Wallula HMU), noise generated during facility operation would not exceed a 50-dBA standard for "quiet areas," based on the applicant's noise analysis in Exhibit X of the application.[226] Noise produced during construction is exempt from the State noise regulations under OAR 340-035-0035(5)(g), but, considering the distance from the protected areas, construction noise is not likely to result in any significant adverse impact. The Council finds that noise generated during construction and operation of the proposed Stateline 3 components would not result in a significant adverse impact to any protected area.

B. Traffic

Construction traffic would follow a designated transportation route from Interstate 84 (I-84) to State Route 11 (alternatively from I-84 to State Route 331 to State Route 11), then north to State Route 334 and west to Gerking Flat Road.[227] The designated route does not pass through any protected areas. Traffic volume on the transportation route would increase during the period of construction of the Stateline 3 components, as described below at page 116. The Council finds that the temporary increase in traffic would not result in traffic delays affecting access to protected areas and would not result in a significant adverse impact to any protected area.

[223] The Department estimated the distances from the closest edge of the Stateline 3 site boundary as shown on Figure L-1 (Response to RAI, Exhibit L).

[224] In 2000, under a Cooperative Agreement between the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers, USFWS assumed management authority over the Peninsula, Two Rivers, Wallula, Juniper Canyon and Stateline HMUs. Accordingly, the McNary National Wildlife Refuge includes the HMUs listed in the table. *McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment*, December 2006, Chapter 1.

[225] These two HMUs are comprised of "broken up, fragmented parcels surrounded and interspersed by private land" (*McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment*, December 2006, p. C-27). The federal management plan generally discusses the two HMUs in tandem and does not separately identify them by location.

[226] The "Quiet Areas" standard is based on the lowest allowable statistical noise level shown on Table 9, incorporated by reference in OAR 340-035-0035(1)(c).

[227] Response to RAI, Exhibit U, p.2.

Trip volume during operations would be significantly lower. The Stateline 3 operations staff would consist of up to eight employees.[228] Road use by employees and road use for deliveries and operational purposes would not produce a significant traffic impact. The Council finds that facility-related road use during operation of the proposed Stateline 3 components would not result in a significant adverse impact to any protected area.

C. Water Use and Wastewater Disposal

Facility water use would be temporary, relatively small in volume and predominantly limited to the construction period. Up to 120,000 gallons of water per day would be used during construction.[229] The water would be obtained from the City of Helix under an existing municipal water right or supplied by a private landowner well under a limited water use license to be issued by OWRD. The water would be used primarily for dust suppression, road and earthwork compaction and concrete mixing. No water used on the site would be discharged into wetlands, streams or other water bodies.[230] Wastewater from washdown of concrete trucks would be discharged into the foundation excavations at each turbine tower.[231] Portable toilets would be provided for onsite sewage handling during construction and would be pumped and cleaned regularly by a licensed contractor. No other wastewater is anticipated to be generated during construction.

During operation of Stateline 3, water use would be primarily for sanitary purposes at the O&M building. Water use is not expected to exceed 1,000 gallons per day.[232] The water would be supplied from an on-site well. Wastewater generated at the O&M building would be discharged to a new on-site septic system.

The Council finds that water use and disposal during construction and operation of the proposed Stateline 3 components would not result in a significant adverse impact on water quantity or water quality within any protected area.

D. Visual Impacts

Wind energy facilities have no emissions that would negatively affect air quality or visibility during facility operation. During construction, dust suppression measures would reduce the potential for visible dust clouds. The applicants provided a visibility analysis for the proposed Stateline 3 wind turbines.[233] Based on that analysis, the Whitman Mission National Historic Site is the only protected area within 10 miles of any proposed turbine location.

Although the applicants estimate that as many as 40 Stateline 3 turbines might be visible from the Whitman Mission site, the nearest turbine location would be more than nine miles away. There are Stateline 1&2 turbines closer to the Whitman Mission site (as well as other wind turbines of the Vansycle Wind Project and the Combine Hills Wind Project). In the Final Order on Amendment #2, the Council analyzed the visual impact of the old Stateline

[228] Revised Request for Amendment #4, Exhibit U, p. 9.
[229] Revised Request for Amendment #4, Exhibit O, p. 1.
[230] Revised Request for Amendment #4, Exhibit O, p. 3.
[231] Revised Request for Amendment #4, Exhibit V, p. 1.
[232] Revised Request for Amendment #4, Exhibit O, p. 2
[233] Revised Request for Amendment #4, Exhibit R, pp. 1-2, and Figures R-2a and R-2b.

3 configuration on the Whitman Mission.[234] The Council found: "Some existing Vansycle Wind Project turbines are visible and some Stateline 3 turbines might be visible from the site. However, at a distance of 10 miles, the Stateline 3 turbines would be a minor element of the background and would not result in significant adverse impact to the scenic value of the historic site." The turbines that were proposed in the old Stateline 3 configuration had a hub height of approximately 165 feet and a blade tip height of approximately 242 feet.[235] The turbines proposed for the new Stateline 3 configuration would have a hub height of approximately 262 feet and a maximum blade tip height of approximately 415 feet.[236] From a distance of more than nine miles, a 173-foot difference in the height of the blade tips is unlikely to be perceived as significant. In addition, although wind turbines might be visible from the Whitman Mission site, the impact would not significantly affect the purpose of the Whitman Mission as a protected area.

According to the historic site's General Management Plan, the site is managed, in part, to "encourage others to assist in the preservation of the cultural and agricultural setting around Whitman Mission National Historic Site and the historic setting of the Mission area."[237] In discussing management of scenic resources, the Plan states: "The scenic resources within adjacent properties will be protected by the voluntary acquisition of conservation easements, agricultural easements, and development rights by a nonprofit organization."[238] No scenic resource easements or development rights pertain to the areas within the Stateline 3 site boundary. The Council finds that the "historic setting of the Mission area" refers primarily to the area immediately adjacent to the Mission and not to distant areas that might be visible from the Mission.

Conclusions of Law

For the reasons discussed above, the Council finds that the proposed Stateline 3 components are not located in any protected area listed in OAR 345-022-0040 and that the design, construction and operation of Stateline 3 are not likely to result in significant adverse impact to any protected area. Based on these findings and the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Protected Areas Standard if Amendment #4 were approved.

(d) Scenic Resources

OAR 345-022-0080

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any

[234] *Final Order on Amendment #2*, p. 63.
[235] *Final Order on Amendment #2*, p.5.
[236] Revised Request for Amendment #4, Exhibit B, p. 2.
[237] *Whitman Mission National Historic Site General Management Plan* (August 2000), Chapter 1, "Whitman Mission National Historic Site Mission Goals."
[238] *Whitman Mission National Historic Site General Management Plan* (August 2000), p. 25.

lands located within the analysis area described in the project order.
* * *

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1 the Council found that the design, construction and operation of the Stateline 1&2 components of the SWP, taking mitigation into account and subject to the conditions stated in the orders, were not likely to result in significant adverse impact to scenic and aesthetic values identified as significant or important in applicable federal land management plans or in local land use plans in the analysis area. Likewise, in the Final Order on Amendment #2, the Council found that the design, construction and operation of the old Stateline 3 configuration would not result in significant adverse impact to identified scenic or aesthetic values. Amendment #4 would change the site boundary of the SWP and authorize the construction of a new Stateline 3 configuration. The Council must decide, therefore, whether the design, construction and operation of the proposed Stateline 3 components would have a significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area

The applicants provided information about potential impacts to scenic resources in Exhibit R of the amendment request. The analysis area for the Scenic Resources Standard is the area within the site boundary and 10 miles from the site boundary, including areas outside the state. In applying this standard, the Council focuses on the effects of facility structures on scenic resources described in "local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order."

A. Visual Features of the Site and the Proposed Facility

The proposed Stateline 3 consists of facility components spread out within an area of approximately 376 acres. Within the site boundary, the applicants propose to construct up to 43 2.3-MW wind turbines or up to 67 1.5-MW wind turbines. The 2.3-MW turbines have a hub height of 80 meters (262 feet) and a maximum blade tip height of 126.5 meters (415 feet). The 1.5-MW turbines also have a hub height of 80 meters (262 feet) and a maximum blade tip height of 121.25 meters (398 feet).[239] The wind turbines would be arrayed in strings along ridgetops, with the individual turbines spaced at approximately 3.1 to 4.1 times the turbine rotor diameter.[240] The proposed Stateline 3 would also include an aboveground 230-kV transmission line, an O&M building and a substation. The transmission line would be supported on structures up to 61 feet tall.[241] The tallest proposed Stateline 3 components are the turbine towers. The turbines are the visual elements of the facility most likely to be visible from a distance, although the visual impact of the towers diminishes with distance and changes in topography.

Condition 37 requires the SWP turbine towers to be smooth, tubular steel structures painted a low-reflectivity neutral gray or white color and requires the O&M building to be

[239] Revised Request for Amendment #4, Exhibit B, p. 2.
[240] Revised Request for Amendment #4, Exhibit B, p. 3.
[241] Revised Request for Amendment #4, Exhibit AA, Figure AA-2.

designed to blend with the surrounding landscape. The modifications to Condition 37 are described below in Revision 36 at page 145. The Council confirms that Condition 37 applies to Stateline 3. UCDC Sections 152.545 through 152.548 establish requirements for the types of signs allowed in the County. Other than signs required for facility safety or required by law, the applicants propose to use only those signs required for operation and safety or required by federal, state, or local law.[242] Turbine tower lighting would be visible at night and would be limited to the minimum required number and intensity to meet Federal Aviation Administration (FAA) guidelines. Outdoor night lighting of the O&M building and the substation would be limited to the minimum required for safety and security, and sensors and switches would be used to keep the lighting turned off when not required. Outdoor night lighting at the O&M building and substation would be hooded and directed to minimize backscatter and offsite light trespass.[243]

B. Effect on Identified Scenic Values

The applicants provided a Zone of Visual Influence (ZVI) analysis using ArcGIS 9.3 software on areas within a 10-mile radius of the proposed turbine locations.[244] The applicants used the analysis to determine whether Stateline 3 wind turbines might be visible from important scenic viewpoints within the analysis area.

The ZVI analysis is a conservative modeling analysis of line-of-sight visibility. The computer model does not account for screening from vegetation or structures that might block the line-of-sight between a viewpoint and the turbine towers. The model does not account for factors such as weather conditions, haze or background landscape that might obscure visibility. The analysis considers a turbine to be "visible" if any part of a turbine is within a line-of-sight, based on the maximum blade tip height. The results of the analysis are illustrated by color-coded maps, showing the approximate density of turbine towers visible from any angle in the landscape within 10 miles of the proposed tower locations.[245]

The applicants modeled both the 67-turbine layout (121.25-meter blade tip height) and the 43-turbine layout (126.5-meter blade tip height). The applicants presented the results of the analysis graphically in Figures R-2a and R-2b. The applicants did not provide a separate ZVI analysis for the proposed transmission line structures, which are approximately 19 meters high.

To decide whether the proposed Stateline 3 facilities would comply with the Council's standard, the Council must first determine whether the applicable land use or land management plans within the analysis area identify significant or important scenic resources and values. The Council must then decide whether any Stateline 3 components could be visible from areas addressed by those plans and, if so, whether their visual impact would result in significant adverse impact to the identified scenic resources and values. Based on the line-of-sight ZVI analysis, the applicants determined that some portion of the new Stateline 3 configuration might be visible within managed areas identified in Table 6.

[242] Revised Request for Amendment #4, Exhibit K, p. 14-15.
[243] Revised Request for Amendment #4, Exhibit R, p. 6.
[244] Revised Request for Amendment #4, Exhibit R, pp. 1-2.
[245] Revised Request for Amendment #4, Exhibit R, p. 2.

Table 6: Land Management Areas

Area	Management	Location	Distance[246] (miles)
Umatilla County	County	Oregon	Stateline 3 lies entirely within the county
Walla Walla County	County	Washington	The transmission line extends 3.1 miles into the County.
Benton County	County	Washington	9
Whitman Mission National Historic Site	Federal	Washington	9
Wallula HMU	Federal	Washington	5
Juniper Canyon/Stateline HMUs	Federal	Oregon	10
Lake Wallula	Federal	Oregon and Washington	10

Umatilla County, Oregon

The proposed Stateline 3 turbines and 12.9 miles of transmission line would be located within Umatilla County, visible from many locations in the County. The Umatilla County Comprehensive Plan (UCCP) is the applicable local land use plan for the County. The UCCP "Open Space, Scenic and Historic Areas, and Natural Resources" element notes that there are scenic resources within the County:[247]

> Outstanding Scenic Views and Sites
>
> There are areas and views which are commonly recognized as striking in their effect on those who experience them. Geological features, green vegetation, and water are major scenic features; human works and dry, shrubsteppe landscape are other attractions. So that areas do not lose their eye-catching attributes, plans attempt to identify "commonly recognized" scenic features, and suggest uses for these areas that minimize conflicts with the valuable features.

The UCCP makes a general finding (Finding #20) regarding scenic views and includes policies to protect them. The finding states: "Umatilla County has a number of outstanding scenic views and pleasant vistas."[248] The relevant policy language is as follows:

> 20. (a) Developments of potentially high visual impacts shall address and mitigate adverse visual effects in their permit application, as outlined in the Development Ordinance standards, (b) It is the position of the County that the Comprehensive Plan designations and zoning already limit scenic and aesthetic conflicts by limiting land uses or by mitigating conflicts through ordinance criteria. However, to address any specific, potential conflicts, the County shall insure special consideration of the following when reviewing a proposed change of land use:
>
> ***
>
> 8. Protection [of] vistas and other views which are important to be recognized because of their limited number and importance to the visual attractiveness of the area.

[246] Distance from the management area to the nearest part of the site boundary estimated by the Department based on Revised Request for Amendment #4, Exhibit R, Figure R-1.
[247] UCCP, Chapter VIII, pp. 2-3.
[248] UCCP, Chapter VIII, p. 15.

(c) Publicly owned lands which provide outstanding scenic views shall be developed where appropriate.

(d) The "Elephant Rock" site shall be studied to determine if there is any scenic significance.

(e) The Wallula Gap has been recognized as a significant scenic (as well as historic and wildlife) area. The county shall enact special land use measures; i.e., overlay zone to protect and preserve this area (see Technical Report).

In Finding #21, the UCCP notes that there are no designated state or federal scenic waterways in Umatilla County. In addition, the UCCP includes additional scenic resource protection policies in the "Multiple Use Plan Policies" section:[249]

Policy 34 - It shall be a policy of the county to thoroughly review development as it may affect historical and scenic values and resources.

Policy 35 - The county will adopt regulations and provide encouragements that are reasonable and enforceable to protect historic, cultural and scenic resources.

Elephant Rock is a rock formation near the town of Gibbon on the northeast boundary of the Umatilla Indian Reservation. It is at least 15 miles from the site boundary. Wallula Gap is a narrow segment of the Columbia River approximately 16 miles south of Pasco, Washington. Wallula Gap is dominated by steep, basalt formations rising nearly vertically from both banks of the river. The County's Technical Report indicates that Wallula Gap has value as a scenic site or view because it is enjoyed "to look upon" rather than "to look from."[250] The UCCP does not identify other scenic resources as important or significant.

Wallula Gap is approximately 10 miles from the proposed Stateline 3 230-kV transmission line corridor and at least 14 miles from the nearest the proposed Stateline 3 turbines.[251] Although the applicant's ZVI analysis does not extend to Wallula gap, it is unlikely that the 61-foot transmission line structures or the turbines from Stateline 3 would be noticeable. The nearest existing Stateline 1&2 turbines lie approximately 7 miles from Wallula Gap.[252] In the Final Order on Amendment #1, the Council found that visual impact of Stateline 1&2 would not adversely affect the scenic value of Wallula Gap that is identified as significant or important. For the same reasons, the Council finds that the proposed Stateline 3 components would not result in a significant adverse impact to significant or important scenic resources or values identified in the UCCP.

Walla Walla County, Washington

Walla Walla County lies to the north of the proposed Stateline 3 turbine locations. Approximately 3.1 miles of proposed 230-kV Stateline 3 transmission line would lie within Walla Walla County. The applicable local land use plan is the Walla Walla County Comprehensive Plan. The Parks and Recreation Element of the Plan identifies the "spectacular views of the Columbia River" from the Wallula Gap National Natural

[249] UCCP, Chapter XVIII, p. 221.
[250] Umatilla County Comprehensive Plan Technical Report (May 1980, with major additions as of September 1984), Chapter D, Table D-XVII, p. 105.
[251] Distances from the management area to the nearest part of the site boundary or turbines estimated by the Department based on Revised Request for Amendment #4, Exhibit R, Figure R-1.
[252] Final Order on Amendment #1, p. 49.

Landmark.[253] The Stateline 3 components would not interfere with views of the Columbia River from this location. The Plan does not identify other scenic resources. The Council finds that the proposed Stateline 3 components of the SWP would not result in a significant adverse impact to significant or important scenic resources or values identified in the Walla Walla County Comprehensive Plan.

Benton County, Washington

Benton County lies to the northwest of the proposed Stateline 3 site, across the Columbia River. The nearest portion of the proposed Stateline 3 230-kV transmission line corridor is approximately 9 miles from the Benton County border. The nearest proposed Stateline 3 turbine locations are at least 14 miles from the Benton County border. The applicable local land use plan is the Benton County Comprehensive Plan. The only scenic resource identified in the plan is State Route 14 (SR 14), which is designated as a Scenic Highway. SR 14 runs along the Columbia River to its eastern terminus at I-82 (near McNary Dam). At its closest point, SR 14 is more than 20 miles from the Stateline 3 site boundary. The Council finds that the proposed Stateline 3 components of the SWP would not result in a significant adverse impact to the scenic resources identified in the Benton County Comprehensive Plan.

Whitman Mission National Historic Site

The Whitman Mission National Historic Site is located northeast of the proposed Stateline 3 components, at least 9 miles from the Stateline 3 site boundary. Based on the ZVI analysis, the applicants estimate that many of the proposed Stateline 3 turbines would be visible from the Whitman Mission. The identified scenic resources of the Whitman Mission site discussed above at page 87. For the reasons discussed there, the Council finds that the proposed Stateline 3 components of the SWP would not result in a significant adverse impact to the identified scenic resources of the Whitman Mission National Historic Site.

Wallula, Juniper Canyon and Stateline HMUs

The Wallula, Juniper Canyon and Stateline HMUs are all at least 5 miles from the proposed Stateline 3 230-kV transmission line. The nearest proposed Stateline 3 wind turbines are more than 10 miles away from the HMUs.[254] Management of these areas has been transferred to the U.S. Fish and Wildlife Service (USFWS) from the U.S. Army Corps of Engineers (USACE). A management plan for these areas has not been adopted by the USFWS, but a draft Comprehensive Conservation Plan (CCP) has been issued.[255] The HMUs are managed primarily for wildlife habitat.[256] Although the draft CCP does not specify

[253] Walla Walla County Comprehensive Plan (December 2007), Chapter 7, p. 6.
[254] Revised Request for Amendment #4, Exhibit R, Figures R-2a and R-2b
[255] *McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment*, December 2006.
[256] The purpose of the Comprehensive Conservation Plan is "to provide reasonable, scientifically grounded guidance for improving…shrub-steppe, riparian, wetland, and cliff-talus habitats, for the long-term conservation of native plants and animals and migratory birds." A secondary purpose is "to provide guidance for providing high quality public use programs in hunting, fishing, wildlife observation, photography, environmental education, and interpretation." *McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment*, December 2006, Chapter 1, p. 2.

significant or important scenic resources, the plan identifies the "visual character" of the Wallula, Stateline and Juniper Canyon areas as "high."[257]

The nearest turbines would be more than 10 miles from the Wallula HMU, which is the closest of the 3 HMUs to the turbines.[258] The HMUs are beyond the range of the ZVI analysis that was done for the turbines, and no ZVI modeling was done for the transmission line. If any Stateline 3 components were visible from locations within the HMUs, it is unlikely that the visual effect would be significant, given the distances involved. Considering that conservation of wildlife habitat is the primary purpose of the HMUs and that public viewing of wildlife is the identified scenic value, the Council finds that the proposed Stateline 3 components of the SWP would not result in a significant adverse impact.

Lake Wallula

Lake Wallula is a recreational resource located within the Columbia River west of the SWP facility. Lake Wallula lies at least 10 miles from the proposed Stateline 3 230-kV transmission line corridor and approximately 14 miles from the nearest proposed Stateline 3 turbine location.

The USACE manages much of the shoreline of Lake Wallula under the guidance of the *McNary Master Plan*.[259] The Plan refers to the importance of visual and scenic resources, but the Plan does not contain goals or polices that specifically address visual or scenic resources. The Plan indicates that Wallula Gap was declared a National Natural Landmark in 1980 and has been approved for inclusion in the National Registry of Natural Landmarks.[260] The Plan notes that the USACE "has no visual resources control concerning development on private lands" and mentions existing visual elements that intrude on the scenic quality of Lake Wallula: "major point sources of visual intrusions are industrial facilities (plants, grain, and petrochemical storage) and irrigation pump facilities. Levees, utility lines, and railroad embankments are the major lineal impacts."[261]

The applicants ZVI analysis did not extend as far as Wallula Gap or Lake Wallula, but it is possible that Stateline 3 components could be visible from some vantage points, but the Stateline 3 components would not interfere with views toward Wallula Gap. As discussed above at page 91, the UCCP recognizes Wallula Gap as a scenic resource. In the Final Order on Amendment #1, the Council found that the nearest existing Stateline 1&2 turbines lie approximately 7 miles from Wallula Gap and the visual impact of Stateline 1&2 would not adversely affect its scenic value. [262] The Council finds that the proposed Stateline 3 components would not have a significant adverse visual impact on the Lake Wallula area.

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[257] *McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment*, December 2006, Chapter 5, Table 5.3.
[258] Revised Request for Amendment #4, Exhibit R, Figures R-2a and R-2b.
[259] *McNary Master Plan – Lake Wallula,* U.S. Army Corps of Engineers, (http://www.nww.usace.army.mil/planning/ER/mcnary/default.htm).
[260] McNary Master Plan, Section 4, at 4.01(c)(5).
[261] McNary Master Plan, Section 5, at 5.02(c).
[262] Final Order on Amendment #1, p. 49.

Conclusions of Law

For the reasons discussed above, the Council finds that the design, construction and operation of the proposed Stateline 3 components, taking mitigation into account, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area. Based on these findings and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Scenic Resources Standard if Amendment #4 were approved.

(e) Recreation

OAR 345-022-0100

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

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

(b) The degree of demand;

(c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

* * *

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1 the Council found that the design, construction and operation of the Stateline 1&2 components of the SWP, taking mitigation into account and subject to the conditions stated in the orders, were not likely to result in significant adverse impacts to recreational opportunities in the analysis area. In the Final Order on Amendment #2, the Council found that the design, construction and operation of the old Stateline 3 configuration would not result in any impacts to recreational opportunities that had not already been considered by the Council in its findings on Stateline 1&2. Amendment #4 would change the site boundary of the SWP and authorize the construction of a new Stateline 3 configuration. The Council must decide, therefore, whether the design, construction and operation of the proposed Stateline 3 components would have a significant adverse impact to important recreational opportunities in the analysis area.

The applicants provided information about compliance with the Council's Recreation Standard in Exhibit T of the amendment request. The analysis area for the Recreation Standard is the area within the site boundary and five miles from the site boundary, including areas outside the state.

The area within the site boundary is privately owned, and it contains no County, State or federal recreational facilities. In the analysis area outside the site boundary, there are no designated recreational lands other than local park and recreation facilities in the unincorporated community of Touchet, approximately 4 miles north of the proposed Stateline 3 transmission line corridor. In the Final Order on the Application, the Council considered the impact of the SWP on recreational opportunities in Touchet and found that, although these opportunities might be important, the SWP would not interfere significantly with the recreational activities that occur there.[263]

Pheasant hunting is allowed seasonally by landowner permission in some areas, both within the site boundary and within the analysis area outside the site boundary. There are numerous similar opportunities for pheasant hunting on public and private land throughout Umatilla County and the rest of the state. Demand for pheasant hunting within the analysis area is no greater than in other available areas. The Council finds that pheasant hunting is not an important recreational opportunity according to the factors listed in the Recreation Standard. Similarly, the Council finds that other recreational activities such as hiking, wildlife observation and nature photography may occur on private land in the analysis area but would not be important recreational opportunities under the standard.

Conclusions of Law

For the reasons discussed above, the Council finds that the design, construction and operation of the proposed Stateline 3 components are not likely to result in a significant adverse impact to any important recreational opportunities in the analysis area. Based on these findings and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Recreation Standard if Amendment #4 were approved.

(f) Public Health and Safety Standards for Wind Energy Facilities

OAR 345-024-0010

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

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

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

Findings of Fact

The Council has previously found that the certificate holder could design, construct and operate the Stateline 1&2 facilities to exclude members of the public from close proximity to the turbine blades and electrical equipment, to preclude structural failure of the

[263] *Final Order on the Application* (September 14, 2001), p. 65.

tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures.[264]

Similar public safety considerations would apply to the Stateline 3 components. Stateline 3 would be located on private property, limiting access by the general public. Condition 126 would require that wind turbines be at least 1,320 feet from any residence and at least 428 feet from public roads.[265] During operation, the minimum blade tip clearance above ground would be 33.5 meters (109.5 feet).[266] The turbine towers would be smooth, tubular structures that would preclude climbing, and they would have locked access doors.[267] Pad-mounted transformers located at each turbine would be located inside locked metal cabinets. The facility's substation would be enclosed by 7-foot-high chain-link fence with a locked gate.[268]

To protect public safety, the Council has adopted site certificate conditions applicable to Stateline 1&2. The certificate holder must notify the Department of any accidents or mechanical failures associated with operation of the facility that may result in public health and safety concerns (Condition 36). The certificate holder must use turbine towers that have locked access doors (Condition 38). The certificate holder must inspect turbine blades on a regular basis for signs of wear or potential failure (Condition 95). The certificate holder must use pad-mounted transformers enclosed in locked cabinets (Condition 103). The Council confirms that Conditions 36, 38, 95 and 103 are applicable to Stateline 3.

The Council previously adopted site certificate conditions applicable to the old Stateline 3 configuration.[269] These conditions included a requirement that the facility substation be enclosed by a seven-foot-tall chain link fence with barbed wire at the top pointing out at a 45-degree angle (Condition 113). The Council confirms that Condition 113 is applicable to the new configuration of Stateline 3, if the Council approves Amendment #4.

Conclusions of Law

The Council finds that the applicants can design, construct and operate the Stateline 3 components to exclude members of the public from close proximity to the turbine blades and electrical equipment. The Council further finds that the applicants can design, construct and operate the Stateline 3 components to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure. Based on these findings and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Public Health and Safety Standards for Wind Energy Facilities if Amendment #4 were approved.

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[264] Final Order on the Application (September 14, 2001), pp. 77-78, and Final Order on Amendment #1 (May 17, 2002), pp. 51-52.
[265] Minimum distance from turbine to public road right-of-way, assuming the use of 1.5-MW turbines having a blade tip height of 389 feet.
[266] The minimum clearance is based on the Siemens 2.3 MW turbine as described in the Revised Request for Amendment #4, Exhibit B, p. 2.
[267] Revised Request for Amendment #4, Exhibit B, p. 3.
[268] Revised Request for Amendment #4, Exhibit DD, p. 1.
[269] Final Order on Amendment #2, pp. 17-21.

(g) Siting Standards for Wind Energy Facilities

OAR 345-024-0015

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

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

(2) Using underground transmission lines and combining transmission routes.

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

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

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

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

Findings of Fact

In the Final Order on the Application and in the Final Order on Amendment #1, the Council found that the certificate holder could design and construct Stateline 1&2 to reduce visual impact, to restrict public access and to reduce cumulative adverse environmental impacts in the vicinity to the extent practicable in accordance with the requirements of OAR 345-024-0015 in effect at that time.

In the Final Order on Amendment #2, the Council found that the certificate holder could design and construct the old Stateline 3 configuration in accordance with the requirements of OAR 345-024-0015.

In May 2007, the Council revised OAR 345-024-0015. Both the earlier version of the standard and the current version require applicants to "reduce cumulative adverse environmental impacts in the vicinity to the extent practicable." The specific parts of the standard regarding use of existing roads and limiting new roads, combining transmission routes, use of existing substations, raptor protection and minimizing visual impact are substantially unchanged from the previous version of the rule.

Compared to the old Stateline 3 configuration, the new configuration proposed in Amendment #4 would have fewer turbines. The old configuration included up to 279 turbines; the proposed Stateline 3 would have a maximum of 67 turbines (if 1.5-MW turbines are used) or 43 turbines (if 2.3-MW turbines are used). The proposed turbines would be taller structures than the turbines in the old configuration. The proposed Stateline 3 turbines would have a hub height of 80 meters (262 feet) compared to 50 meters (164 feet) for the old Stateline 3 turbines. The old Stateline 3 configuration included construction of approximately 21.5 miles

of new access roads; the proposed configuration would have up to approximately 23 miles of new access roads (if 1.5-MW turbines are used) or approximately 16.6 miles (if 2.3-MW turbines are used). The old Stateline 3 configuration included about 30.5 miles of underground collector lines and 17 miles of aboveground collector lines; the proposed Stateline 3 configuration would include up to 24.4 miles of underground collector lines and no aboveground collector lines. The old Stateline 3 configuration included an aboveground 115-kV or 230-kV transmission line approximately 8.5 miles in length (in Oregon); the proposed configuration would have an aboveground 230-kV transmission line approximately 12.9 miles in length (in Oregon). Both configurations included a facility substation.

The old Stateline 3 components would have had a cumulative permanent footprint of approximately 75 acres. The proposed Stateline 3 facilities would have a cumulative footprint of approximately to 57 acres (if 1.5-MW turbines are used) or 35 acres (if 2.3-MW turbines are used).[270] The old Stateline 3 configuration would have had up to 345 acres of construction disturbance. The proposed Stateline configuration would have approximately 321 acres of construction disturbance (if 1.5-MW turbines are used) or approximately 205 acres (if 2.3-MW turbines are used).

The applicants provided a cumulative impact analysis of the proposed new Stateline 3 configuration.[271] The applicants estimated potential avian fatality impacts, assuming the average fatality rates reported for five wind energy facilities in Umatilla County and the neighboring Washington counties of Walla Walla and Benton. Based on these rates, the Stateline 3 facility could result in 211 avian fatalities per year (including 4 raptors) and 163 bat fatalities per year.[272] Compared to the old Stateline 3 configuration, which the Council approved, the potential avian and bat fatalities would be substantially reduced by the new configuration. Using the same average fatality rates, the old configuration could have resulted in 386 avian fatalities (including 8 raptors) and 294 bat fatalities per year.

A. Access Roads

The Council's standard encourages the use of existing roads to provide access to the facility site, minimizing the amount of land used for new roads and locating new roads in a manner that reduces adverse environmental impacts. To minimize the impacts of road construction, Stateline 3 would be designed to make use of existing county and private roads to the extent possible.[273] New access roads would be up to 37 feet wide (including shoulders) during construction but would be reduced to 16 feet wide during operation.[274] Condition 44 requires the certificate holder to locate roads to minimize disturbance and maximize transportation efficiency and to avoid sensitive resources and unsuitable topography. The Council confirms that Condition 44 is applicable to Stateline 3. To further reduce the cumulative effects of new roads, the applicants propose to maintain vegetative buffer strips between areas of construction impact and any receiving waters.

[270] Response to RAI, Exhibit P, Tables P-3 and P-4.
[271] Response to RAI, Exhibit DD.
[272] Calculation based on the 67-turbine layout, which would have a maximum generating capacity of 100.5 MW.
[273] Revised Request for Amendment #4, Exhibit B, p. 6.
[274] Response to RAI, Exhibit B, p. 2.

B. Transmission Lines and Substations

The standard encourages the use of underground transmission lines, combining transmission routes and minimizing the number of new substations. The collector system for Stateline 3 would be entirely underground and would follow access roads as much as possible.[275] An aboveground 230-kV transmission line, approximately 12.9 miles in length in Oregon (plus approximately 3 miles in Washington), would be necessary to transmit the facility's electrical output to the regional power grid. A single project substation would be centrally-located within the Stateline 3 turbine area.[276] The substation would be located within Category 6 habitat.[277]

C. Wildlife Protection

The standard encourages facility design that reduces the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment. The applicant proposes to design the transmission lines to minimize raptor injury by conforming to the 2006 Avian Powerline Interaction Committee (APLIC) suggested practices for raptor protection on power lines.[278] Condition 64 requires the certificate holder to spread gravel on turbine pad areas to avoid creating habitat for raptor prey and to reduce weed infestation. Conditions 37 and 70 require the use of smooth, tubular towers rather than lattice towers to reduce avian perching opportunities in proximity to turbine blades. Two unguyed, monopole met towers would be constructed for Stateline 3. Conditions 114 and 115 require the certificate holder to design the transmission line support structures to deter perching near turbines and to reduce the risk of raptor electrocution. In Revision 70, based on discussion with ODFW, the Department recommends modification of Condition 114 to require anti-perching devices on transmission line support structures that are located within ½-mile of any wind turbine unless the top of the support structure is below the base of the turbine tower due to topography. In Revision 71, the Department recommends modification of Condition 115 to require the certificate holder to design the transmission lines to conform to the APLIC guidelines. The Council confirms that Conditions 37, 64, 70, 114 and 115 are applicable to Stateline 3.

In addition to the measures to reduce adverse impacts on avian species addressed by the conditions discussed above, the applicants have designed the new Stateline 3 configuration to avoid direct impacts to Washington ground squirrel (WGS) habitat.[279] The WGS is a State-listed endangered species, discussed below at page 104. Condition 69 requires avoidance impacts to WGS colonies. Condition 131 would require the certificate holder to avoid permanent and temporary disturbance to all Category 1 and Category 2 habitat within the Stateline 3 site boundary.

D. Visual Features

The standard encourages facility design that minimizes adverse visual features. Condition 37 requires the certificate holder to reduce the visual impact of the facility. Measures include painting turbine towers uniformly in a neutral light gray or white color and

[275] Response to RAI, Exhibit DD, p. 3.
[276] Revised Request for Amendment #4, Exhibit C, Exhibits C-2 and C-3; Response to RAI, Exhibit DD, pp, 3-4.
[277] Revised Request for Amendment #4, Exhibit P, Exhibit P-1a.
[278] Response to RAI P3.
[279] Response to RAI, Exhibit DD, pp. 5-6.

not allowing any advertising to be used on any part of the facility or on any signs posted at the facility. Condition 37 requires the certificate holder to design and construct the O&M building to be generally consistent with the character of similar buildings used by commercial farmers or ranchers. The Council modifies Condition 37 as described in Revision 36 and confirms that Condition 37 applies to Stateline 3.

E. Lighting

The standard requires the use of the minimum lighting necessary for safety and security purposes and the use of techniques to prevent casting glare from the site but does not restrict the use of lighting otherwise required by the FAA or the Oregon Department of Aviation. Condition 37 requires the certificate holder to use only the minimum lighting on turbines required by the FAA. The condition allows low-impact lighting to be used for occasional nighttime repairs, maintenance or operations at the substation and requires that security lighting at the Stateline 3 O&M building and substation be shielded or downward-directed to reduce glare. The modification of Condition 37 is discussed in Revision 36.

Conclusions of Law

Based on these findings and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Siting Standards for Wind Energy Facilities if Amendment #4 were approved.

(h) Siting Standards for Transmission Lines

OAR 345-024-0090

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

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

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

Findings of Fact

A. Electric Fields

In the Final Order on the Application and the Final Order on Amendment #1, the Council found that the certificate holder could design and construct the Stateline 1&2 transmission line components so that electric fields would not exceed 9 kV per meter at one meter above ground surface in areas accessible to the public and so that induced currents would be as low as reasonably achievable.

The proposed Stateline 3 would include underground 34.5-kV collector lines and an aboveground 230-kV interconnection transmission line. For the underground lines, the electric field is totally contained within the insulation of the cable.[280] There would be no

[280] Revised Request for Amendment #4, Exhibit AA, p. 5.

measurable electric field at the surface (or at one meter above ground surface). Condition 62 addresses the construction of underground electrical and communications cables. The Council confirms that Condition 62 is applicable to Stateline 3.

The applicants calculated the electric field that would be produced by the aboveground 230-kV transmission line using the Bonneville Power Administration (BPA) Corona and Field Effect Program (Version 3). The proposed line would consist of one, three-phase circuit with two conductors per phase.[281] The assumed line loading for the electric field calculation was 1,506 amperes per phase. The transmission line would be supported by H-frame wooden poles spaced approximately 500 feet apart. The minimum line clearance above ground was assumed to be 30 feet. The calculated maximum electric field strength was 3.8 kV per meter at one meter above ground surface.[282] Condition 113 requires, in part, that the certificate holder design and construct transmission lines to conform to the 9 kV per meter electric field standard and to reduce induced voltages. In Revision 69, the Department recommends modification of Condition 113 to reflect the new Stateline 3 components as described in the amendment request.

B. Induced Current

The magnetic and electric fields around alternating current transmission lines can induce current or voltage in nearby objects. Induced currents are not hazardous to people but can be a concern for railroad communications and pipeline cathodic protections systems that parallel transmission lines. An ungrounded fence or metal roof located within an electric field can carry an induced voltage. If proper precautions are not taken, the induced voltage can result in an electrical shock when a person or animal touches the object, which allows a current to flow to the ground. Grounding of potentially charged structures minimizes the danger by providing an alternative path for the electric current. Passing current through the grounding wire minimizes the current that would otherwise flow through a person or animal that comes in contact with the object.

Because the underground 34.5-kV cables do not create an electric field at the ground surface, the SWP collector system does not present an induced voltage risk. The proposed Stateline 3 230-kV transmission line could cause induced voltage. As required by Condition 6, FPL Stateline proposes to ground fences that are parallel to the transmission line and to provide grounding for any metal-roofed buildings in proximity to the line.[283] Condition 6 incorporates the language of OAR 345-027-0023(4), which provides standard condition language to address public safety for transmission lines within the Council's jurisdiction. The Council confirms that Condition 6 is applicable to Stateline 3.

Conclusions of Law

Based on these findings and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Siting Standards for Transmission Lines if Amendment #4 were approved.

[281] Revised Request for Amendment #4, Exhibit AA, p. 4.
[282] Revised Request for Amendment #4, Exhibit AA, p. 6.
[283] Revised Request for Amendment #4, Exhibit AA, p. 11.

4. Standards to Protect Wildlife

(a) Threatened and Endangered Species

OAR 345-022-0070

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

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

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

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

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

Findings of Fact

There are no protection and conservation programs adopted under ORS 564.105(3) for threatened or endangered plant species in the SWP area. In the Final Order on the Application and the Final Order on Amendment #1, the Council found that the design, construction and operation of Stateline 1&2, taking mitigation into account and subject to the site certificate conditions adopted in the orders, did not have the potential to significantly reduce the likelihood of the survival or recovery of any threatened or endangered plant or wildlife species listed under Oregon law. In the Final Order on Amendment #2, the Council made the same finding with regard to the old Stateline 3 components. Amendment #4 would change the site boundary of the SWP and authorize the construction of a new Stateline 3 configuration. The Council must decide, therefore, whether the design, construction and operation of the proposed Stateline 3 components would have the potential to significantly reduce the likelihood of the survival or recovery of any threatened or endangered plant or wildlife species listed under Oregon law (State-listed species).

A. Plant Species

The Council has previously found that one State-listed threatened plant species, Laurence's milk-vetch (*Astragalus collinus*), potentially occurs in the analysis area for Stateline 1&2.[284] The species has not been observed during any surveys for rare plants conducted for Stateline 1&2 or the old Stateline 3 configuration. In 2008, Northwest Wildlife Consultants (NWC) conducted rare plant surveys within 500 feet of the proposed new Stateline 3 facilities.[285] No State-listed plant species were observed during these surveys. The

[284] *Final Order on the Application* (September 14, 2001), p. 57.
[285] Revised Request for Amendment #4, Exhibit Q, p. 1.

Council finds that the design, construction and operation of the proposed new Stateline 3 configuration are not likely to cause a significant reduction in the likelihood of survival or recovery of the State-listed plant species.

B. Fish and Wildlife Species

Washington ground squirrel (*Spermophilus washingtoni*) is a mammal species that is State-listed as endangered. Bald eagle (*Haliaeetus leucocephalus*) is a raptor that is State-listed as threatened. The Council has previously found that these two State-listed wildlife species potentially occur within the analysis areas for Stateline 1&2.[286] The Council adopted Condition 56, which requires pre-construction surveys in construction zones having suitable habitat for Washington ground squirrel (WGS) and requires no-construction buffers and other mitigation if WGS activity is found. The Council adopted Condition 69, which requires avoidance of WGS colonies and requires measures to minimize impacts to potential WGS habitat.

In the Final Order on Amendment #2, the Council found that, in addition to the Washington ground squirrel (WGS) and bald eagle, a third State-listed species, American peregrine falcon (*Falco peregrinus anatum)*, potentially could occur within the old Stateline 3 analysis area.[287] In 2007, the Oregon Fish and Wildlife Commission removed peregrine falcon from the State list of threatened and endangered species.

In the Final Order on Amendment #2, the Council found that construction and operation of the old Stateline 3 configuration would directly affect an estimated 12.3 acres of known WSG habitat.[288] The Council modified Condition 69 and adopted Condition 107, which required the certificate holder to implement the *Resource Impact Avoidance and Mitigation Plan* to reduce and mitigate the impacts to WGS habitat.[289] Based on the small area of direct impact on WGS habitat, the existence of the WGS in other suitable habitat throughout the SWP project area and the mitigation measures required under the *Resource Impact Avoidance and Mitigation Plan*, the Council found that the construction, operation and retirement of the old Stateline 3 components were not likely to cause a significant reduction in the likelihood of survival or recovery of the WGS.

Amendment #3 addressed, in part, the certificate holder's request to extend the construction deadlines for the old Stateline 3 configuration. In the amendment request, the certificate holder indicated that a future modification of the Stateline 3 configuration might involve changes to the turbine strings proposed to be sited in the area that was classified as Category 1 at the time of the Council's decision on Amendment #2.[290] The certificate holder would submit a later amendment request to address the facility modification and, in the meantime, would avoid disturbance of the previously identified Category 1 habitat. The Council adopted Condition 121, which required avoidance of the identified Category 1 habitat pending a future site certificate amendment proceeding.

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[286] *Final Order on Amendment #1* (May 17, 2002), p. 47.
[287] *Final Order on Amendment #2* (June 6, 2003), p. 73.
[288] *Final Order on Amendment #2* (June 6, 2003), p. 73.
[289] *Final Order on Amendment #2* (June 6, 2003), Attachment C.
[290] ODFW defines "Category 1" habitat as "irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species" that is "limited on either a physiographic province or site-specific basis" (OAR 635-415-0025).

The bald eagle and the WGS are the State-listed species that have potential to occur within the new Stateline 3 site boundary. Between May and September 2008, NWC conducted wildlife surveys within the potential disturbance area around the proposed new Stateline 3 configuration.[291] No individual WGS, burrows or other signs of WGS were observed within the survey area.[292] The applicants identified three WGS colonies near, but outside, the survey area. The applicants have designed the turbine locations, access roads, collector lines and other structures to avoid direct impacts on WGS habitat. The edge of the closest WGS colony is 790 feet from the proposed 230-kV transmission line.[293] Because the new Stateline 3 configuration avoids impact to the 12.3 acres of known WGS habitat that would have been affected by the old configuration, the *Resource Impact Avoidance and Mitigation Plan* is no longer appropriate. In Revisions 46 and 64, the Department recommends that the Council modify Condition 69 and remove Condition 107 to eliminate the requirement that the certificate holders implement the *Resource Impact Avoidance and Mitigation Plan.* The modification of Condition 69 would add a requirement for on-site monitoring of the WGS area during construction, as proposed by the applicants.[294] In Revision 75, the Department further recommends that the Council remove Condition 121, which, as described above, required avoidance of impact to Category 1 WGS habitat pending redesign of Stateline 3. In the request for Amendment #4, the applicants have proposed a new Stateline 3 configuration and, therefore, Condition 121 is no longer needed.

The applicants describe the bald eagle as an "infrequent visitor to the study area" and note the lack of nest trees or known bald eagle nests in the area.[295] The applicants assessed the risk to bald eagles as "low" and noted that there have been no reported bald eagle fatalities at any wind project in the western U.S.

The Council finds that the design, construction and operation of the proposed new Stateline 3 configuration are not likely to cause a significant reduction in the likelihood of survival or recovery of the State-listed wildlife species.

Conclusions of Law

For the reasons discussed above and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Threatened and Endangered Species Standard if Amendment #4 were approved.

(b) Fish and Wildlife Habitat

OAR 345-022-0060

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

[291] Revised Request for Amendment #4, Exhibit Q, p. 2, and Figure Q-1; Response to RAI, Exhibit Q. Because no suitable habitat for fish species exists within the Stateline 3 site boundary, the applicants did not conduct surveys for fish species.
[292] Revised Request for Amendment #4, Exhibit Q, p. 4, and Response to RAI, Exhibit Q.
[293] Response to RAI, Exhibit Q, p. 2.
[294] Response to RAI, Exhibit P, p. 11.
[295] Revised Request for Amendment #4, Exhibit Q, p. 5.

Findings of Fact

A. Habitat Impacts

In the Final Order on the Application and the Final Order on Amendment #1, the Council found that the Stateline 1&2 components are consistent with the ODFW habitat mitigation goals and standards. Habitats affected by Stateline 1&2 components are summarized in Table 7.[296]

Table 7: Habitat Impacts of Stateline 1&2 Components

Habitat type	Area of construction impact (acres)	Area of permanent impact (acres)
Category 2		
Shrub-steppe	0.7	0.5
Category 3		
CRP	49.3	21.5
Shrub-steppe	38	27.3
Non-forest riparian	0.001	0
Category 4		
Shrub-steppe	1.01	1.02
Category 6		
Agricultural	107	38
TOTAL	**196.0**	**88.3**

In the Final Order on Amendment #2, the Council found that the old Stateline 3 configuration was consistent with the ODFW goals and standards except for the potential impacts on Category 1 habitat used by the WGS (as discussed above at page 104). The Council found that the old Stateline configuration did not comply with the Council's Fish and Wildlife Habitat Standard.[297] The Council applied the "balancing analysis" under *former* OAR 345-022-0000(2).[298] Using the balancing analysis, the Council may issue or amend a site certificate for a facility that does not meet a siting standard by finding that the overall public benefits outweigh the damage to the resources protected by the standard.[299] Based on consideration of the balancing factors described in the rule and considering the implementation of the *Resource Impact Avoidance and Mitigation Plan* (Attachment C to the Final Order on Amendment #2), the Council found that the overall public benefits of the facility outweighed the damage to the resource (WGS habitat) protected by the Council's Fish and Wildlife Habitat Standard.[300] The Council modified Condition 69 and adopted Condition 107 to require implementation of the *Resource Impact Avoidance and Mitigation Plan*. The new Stateline 3 configuration would have no direct impact on the Category 1 WGS area that was at issue when the Council applied the balancing analysis in the Final Order on

[296] Stateline 1 data is based on the *Final Order on the Application* and a letter from Andy Linehan, received July 23, 2001. Stateline 2 data is based on the *Final Order on Amendment #1* and Tables 3 and 4 in the Request for Amendment #1.
[297] *Final Order on Amendment #2* (June 6, 2003), p. 84.
[298] The Council amended OAR 345-022-0000(2) in September 2003.
[299] ORS 469.501(1).
[300] *Final Order on Amendment #2* (June 6, 2003), p. 91.

Amendment #2. The Council modifies Condition 69 and removes Condition 107 from the site certificate as described in Revisions 46 and 64.

In Exhibit P of the amendment request, the applicants classified the habitat within the new Stateline 3 site boundary according to ODFW categories.[301] The habitat categories are shown on Figures P-1a through P-1h.[302]

The applicants estimated the maximum impacts of the new Stateline 3 components on high-value wildlife habitat by using a layout of 1.5-MW turbines (maximum number of turbines), including two alternate turbine locations, and placing the components in the highest category allowable while maintaining a buildable design.[303] The estimated habitat impacts of the Stateline 3 components are shown in Table 8.[304]

Table 8: Maximum Habitat Impacts of the Stateline 3 Components

Habitat type	Area of construction impact (acres)	Area of permanent impact (acres)	Acres Within the Site Boundary
Category 1			
Grassland-steppe	0	0	136.32
Subtotal	0	0	136.32
Category 2			
Grassland-steppe	0	0	14.39
Riparian	0	0	2.13
Subtotal			16.52
Category 3			
CRP or Revegetated	53.06	7.38	1,178.4
Grassland-steppe	14.87	1.52	732.73
Grassland-steppe – Shrub-steppe	2.6	0.01	261.71
Shrub-steppe	1.37	0	42.28
Subtotal	71.9	8.91	2,215.12
Category 4			
Grassland-steppe	0.13	0	96.04
Subtotal	0.13	0	96.04
Category 5			
Grassland-steppe	0.7	0	4.2
Shrub-steppe	0.86	0	10.85
Subtotal	1.56	0	15.05

[301] OAR 635-415-0025 defines six categories of habitat in order of their value to wildlife. The rule establishes mitigation goals and corresponding implementation standards for each habitat category. The Council has previously discussed the six habitat categories and the mitigation goals in the *Final Order on the Application* (September 14, 2001), p. 49, and in the *Final Order on Amendment #2* (June 6, 2003), pp. 75-76.
[302] Response to RAI, Exhibit P, Figures P-1a through P-1h.
[303] Response to RAI P1.
[304] Based on Response to RAI, Exhibit P, Table P-5.

Category 6			
Developed	3	0	22.88
Dry Agricultural	250.81	49.94	4,553.44
Subtotal	253.81	49.94	4,576.32
TOTAL	**327.4**	**58.85**	**7,055.37**

Category 1 habitat within the site boundary consists of grassland-steppe vegetation within a 785-foot buffer around WGS colonies located near the transmission line. ODFW considers the habitat to be essential for WGS survival, and therefore it is considered Category 1.[305] Category 2 habitat within the site boundary includes high quality grassland steppe vegetation, riparian trees and other riparian habitat, and areas containing recently active raptor nests and burrowing owl burrows. The applicants have designed the new Stateline 3 configuration to avoid impacts to all Category 1 and Category 2 habitat within the site boundary. In Revision 85, the Department recommends that the Council adopt Condition 131, which would require the certificate holder to avoid impacts on Category 1 and Category 2 habitat within the Stateline 3 site boundary.

Category 3 habitat within the site boundary includes moderate quality grassland steppe and shrub-steppe vegetation types as well as revegetated CRP areas.[306] Category 4 and 5 habitat within the site boundary consists of low quality grassland steppe areas. The applicants rated "agricultural areas" within the site boundary as Category 6.

B. Proposed Habitat Mitigation Area

The applicants proposed to establish a Habitat Mitigation Area (HMA) to address the permanent and temporal impacts of the new Stateline 3 components on wildlife habitat. At a minimum, the HMA must be large enough to achieve, within a reasonable time, the habitat mitigation goals and standards of ODFW's Fish and Wildlife Habitat Mitigation Policy described in OAR 635-415-0025. The ODFW goals require mitigation to achieve "no net loss" of habitat in Categories 3 and 4 (acre-for-acre mitigation). For Category 5 impacts, mitigation is achieved by a "net benefit in habitat quantity or quality." In addition, to address the temporal loss of habitat quality during the recovery of Category 3 and Category 5 shrub-steppe (SS) and grassland shrub-steppe (GSS) habitat temporarily disturbed during construction (outside the footprint), the HMA must include ½ acre for every acre of shrub-steppe habitat affected (a 0.5:1 ratio).

Based on the maximum habitat impacts shown in Table 8, the Department calculated the maximum mitigation area requirement to be 11 acres of predominantly Category 3 habitat.[307] The actual Stateline 3 footprint and construction disturbance areas cannot be determined until the final design layout of the facility is known. The Council modifies Condition 112, as discussed in Revision 68. As modified, Condition 112 requires the certificate holder to provide to the Department and ODFW a map showing the final design configuration of Stateline 3 and a table showing the acres of impacts on wildlife habitat,

[305] Response to RAI, Exhibit P, p. 9.
[306] Revised Request for Amendment #4, Exhibit P, p. 8.
[307] The sample calculation is shown in Attachment C (the proposed *Stateline 3 Habitat Mitigation Plan*).

similar to Table 8. The habitat impacts of the final design layout would determine the final size of the mitigation area.

The applicants proposed a 50-acre HMA and identified two possible sites for the HMA.[308] According to the applicant's preliminary assessment, each parcel includes approximately 50 acres of native grassland steppe vegetation. Each of the possible sites contains grassland currently used periodically for domestic livestock (sheep and cattle) grazing. ODFW has visited both sites and agrees that either one would be suitable for the Stateline 3 HMA.

Proposed Area A has been studied previously.[309] In the Request for Amendment #2, Area A encompassed proposed turbine string BG-C and its associated survey corridor. The turbines were never built, and Area A would not contain any new wind turbines if the area were selected as the HMA. Area A contains mostly Category 1 habitat associated with an historic WGS colony. The northeast portion of Area A is Category 2 habitat. If Area A were selected, it would ensure conservation of regionally scarce habitat containing vegetation and soil characteristics that could support WGS. Grasshopper sparrows (a State Sensitive - Vulnerable species) were observed in the area during the breeding season of 2002.[310]

Area B is located to the east of adjacent land that was investigated during the 2002 survey referenced above. Area B is similar in vegetation, structure and slope aspect as the studied area. The area contains habitat suitable for WGS, grasshopper sparrows and burrowing owls. The applicant estimates that approximately 75-percent of Area B is Category 1 due to the presence of WGS. Small patches of weeds are present, due to past livestock grazing pressure.

C. Mitigation Measures

In the Final Order on the Application and the Final Order on Amendment #1, the Council adopted Conditions 52, 53, 54, 56, 63, 64, 65, 66, 67, 68, 69, 70, 89, 90, 91, 93, 94, 101 and 104, which address mitigation for the potential impacts of Stateline 1&2 on wildlife and wildlife habitat. In the Final Order on Amendment #2, the Council applied all of these conditions to the old Stateline 3 configuration, except Conditions 66, 67, 101 and 104, which relate specifically to Stateline 1&2 components. In the Final Order on Amendment #2 and the Final Order on Amendment 3, the Council adopted Conditions 107, 112, 114, 115, 116, 117 and 121, which address mitigation for the potential impacts of the old Stateline 3 configuration on wildlife and wildlife habitat. The Council applies or modifies the following site certificate conditions to address the potential impacts of the new Stateline 3 configuration on wildlife and wildlife habitat:

- Conditions 52 and 70: These conditions relate to the design (Condition 52) and construction (Condition 70) of the facility to reduce risk to avian species (for example, by not locating turbines in narrow ridge saddles).

[308] Email from Mike Pappalardo, February 9, 2009.
[309] Revised Application to Amend Site Certificate, Amendment 2 (October 2002), Tab 14 (Northwest Wildlife Consultants, Washington Ground Squirrel Impact Minimization and Mitigation Plan, Stateline 3, Part B Wind Project).
[310] Revised Application to Amend Site Certificate, Amendment 2 (October 2002), Tab 12 (Northwest Wildlife Consultants, Pre-construction Wildlife Investigation, Stateline 3 Part A and Part B Wind Project).

- Condition 53: This condition requires pre-construction survey of known Swainson's hawk nests in the vicinity of proposed construction and measures to avoid nest disturbance during the sensitive season if occupied nests are found.
- Condition 54: This condition is similar to Condition 53 but applies to burrowing owls.
- Condition 56: This condition requires pre-construction survey for the presence of WGS in constructions zones that have suitable habitat and requires no-construction buffers and other mitigation if WGS activity is found. The condition defines "construction zones" as the areas of permanent or temporary construction disturbance plus a 175-foot surrounding buffer.
- Conditions 63 and 90: These conditions list measures to be implemented during construction (Condition 63) and operation (Condition 90) to reduce or avoid impacts to wildlife.
- Condition 64: This condition requires the use of gravel on turbine pad areas to avoid creating artificial habitat for raptor prey and to reduce the potential for weed infestation.
- Conditions 65 and 91: These conditions list measures to be implemented during construction (Condition 65) and operation (Condition 91) to reduce or avoid impacts to wildlife habitat. Condition 65 includes the requirement to restore temporarily disturbed areas as described in the *Revegetation Plan*.
- Condition 68: This condition lists measures to be implemented to avoid impacts on temporarily disturbed Category 6 habitat. This condition also includes the requirement to restore temporarily disturbed areas as described in the *Revegetation Plan*.
- Condition 69: This condition requires avoidance impacts to WGS colonies. The Council modifies Condition 69 to eliminate the requirement that the certificate holders implement the *Resource Impact Avoidance and Mitigation Plan.* The modification would require an on-site wildlife monitor, who would flag the habitat required for WGS survival as a no-entry area during construction, as proposed by the applicants.[311] The wildlife monitor would survey the area for WGS activity before and after construction.
- Condition 89: This condition requires avoidance of impacts to new nesting or denning sites that are found during facility operation.
- Condition 93: This condition requires implementation of wildlife monitoring as described in the *Oregon Wildlife Monitoring Plan*.
- Condition 94: This condition requires additional mitigation if the analysis of monitoring data indicates impacts to wildlife or wildlife habitat that the certificate holder has not adequately addressed by other mitigation measures.
- Condition 112: This condition addresses mitigation for the permanent impacts of Stateline 3 on wildlife habitat. The Council modifies Condition 112 to require

[311] Response to RAI, Exhibit P, p. 11.

implementation of the *Stateline 3 Habitat Mitigation Plan* as described in Revision 68 and Attachment C.

- Condition 114: This condition requires installation of anti-perching devices on transmission line support structures within one mile of any turbine. In Revision 70, the Department recommends that the Council modify this condition to reduce the distance to one-half mile, unless the top of the support structure is below the base of the turbine tower, due to topography.[312]
- Condition 115: This condition requires the certificate holder to design the electrical conductors of aboveground transmission lines with sufficient spacing to reduce the risk of bird electrocution. The Council modifies the condition to require design of transmission line support structures to conform to the avian protection practices recommended by the Avian Power Line Interaction Committee.
- Condition 117: This condition requires mitigation measures to avoid construction disturbance during the sensitive season if known ferruginous hawk nests are occupied.
- Condition 131: This condition requires the certificate holder to avoid permanent and temporary disturbance to all Category 1 and Category 2 habitat within the Stateline 3 site boundary.
- Condition 135: This condition mitigates possible disturbance to nesting Swainson's hawks during construction of Stateline 3 by requiring that transmission line support structures be located at least 800 feet from active nest sites.

Conclusions of Law

For the reasons discussed above and subject to the site certificate conditions described herein, the Council concludes that the SWP would comply with the Council's Fish and Wildlife Habitat Standard if Amendment #4 were approved.

5. Standards Not Applicable to Site Certificate Eligibility

Under ORS 469.501(4), the Council may issue a site certificate without making the findings required by the standards discussed in this section (Structural Standard, Historic, Cultural and Archaeological Resources Standard, Public Services Standard and Waste Minimization Standard).[313] Nevertheless, the Council may impose site certificate conditions based on the requirements of these standards.

[312] Based on recommendations by ODFW.

[313] This statute provides that the Council may not impose certain standards "to approve or deny an application for an energy facility producing power from wind." ORS 469.300 defines an "application" as "a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." Although ORS 469.501(4) does not explicitly refer to a request for a site certificate amendment, we assume that the Legislature intended it to apply.

(a) Structural Standard

OAR 345-022-0020

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

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 Edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

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

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

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Proposed Conditions

In the Final Order on the Application and the Final Order on Amendment #1, the Council made findings regarding the seismic, geological and soil hazards in the area of the Stateline 1&2 components. In the Final Order on Amendment #2, the Council made findings on the area of the old Stateline 3 configuration. The site certificate includes conditions addressing structural safety (Conditions 16, 17, 18, 49, 50, 51 and 59).

The applicants provided information regarding the seismic characteristics of the site and possible seismic and geological hazards in Exhibit H of the amendment request. The new Stateline 3 configuration that is proposed by the applicants in Amendment #4 lies largely within the area of the old Stateline 3 configuration.[314] The geological conditions of the proposed Stateline 3 site are similar to the geological conditions of Stateline 1&2: wind-blown sandy silt of variable thickness covers basalt bedrock.[315] FPL Vansycle conducted soil

[314] Response to RAI C2 and Figures C-5a and C-5b.
[315] Revised Request for Amendment #4, Exhibit H, p. 1.

borings and test pits at several locations throughout the old Stateline 3 area.[316] There are several proposed new Stateline 3 turbine locations that lie outside, but within a mile, of the old Stateline 3 turbine locations.

Conditions 16, 17 and 18 incorporate mandatory conditions required under OAR 345-027-0020(12), (13) and (14). Condition 49 requires the certificate holder to design the facility in accordance with seismic design provisions of the Oregon Building Code. In comments on the amendment request, DOGAMI advised that the facilities should be designed to meet the current Oregon Structural Specialty Code (OSSC 2007) and the 2006 International Building Code.[317] In Revision 41, the Department recommends that the Council modify Condition 49 to incorporate the building code requirements recommended by DOGAMI. Conditions 50 and 51 contain turbine foundation design specifications recommended by DOGAMI in 2001. Condition 59 requires inspection of excavations to confirm that geologic conditions are appropriate for supporting turbines and other facilities. The Council confirms that Conditions 16, 17, 18, 49, 50, 51 and 59 apply to Stateline 3.

The applicants propose to conduct a detailed site-specific investigation of the Stateline 3 site before construction begins.[318] In Revision 86, the Department recommends that the Council adopt Condition 132, which would require a pre-construction geotechnical investigation and consultation with DOGAMI.

(b) Historic, Cultural and Archaeological Resources

OAR 345-022-0090

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

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

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

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

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Proposed Conditions

In the Final Order on the Application, the Final Order on Amendment #1 and the Final Order on Amendment #2, the Council reviewed cultural resource surveys of the areas where

[316] *Final Order on Amendment #2* (June 6, 2003), p. 92.
[317] Letter from William Burns, DOGAMI, January 15, 2009.
[318] Revised Request for Amendment #4, Exhibit H, p. 1.

the Stateline 1&2 and old Stateline 3 components would be located. These surveys were conducted in consultation with the CTUIR. The Council adopted Conditions 75 and 76 to safeguard cultural resources.

The site boundary for the proposed new Stateline 3 configuration includes some areas that were not surveyed for the old Stateline 3 configuration. The CTUIR Cultural Resources Protection Program conducted pedestrian surveys in the summer and fall of 2008 in the areas that had not previously been surveyed for archaeological resources. These surveys identified three prehistoric sites, two historic era sites and one isolated artifact.[319]

The applicants agreed to implement the measures recommended by CTUIR to protect cultural and archaeological sites.[320] In Revision 47, the Department recommends that the Council adopt modify Conditions 75 and 76 to incorporate the recommended measures. The Council confirms that Conditions 75 and 76 are applicable to the proposed Stateline 3.

(c) Public Services

OAR 345-022-0110

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

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Proposed Conditions

In the Final Order on the Application and the Final Order on Amendment #1, the Council addressed the potential impacts of construction and operation of Stateline 1&2 on the ability of public and private providers within the analysis area to provide public services.[321] The analysis area that was addressed by the Council incorporated communities within 30 miles of the Stateline 1&2 site boundary. The Council found that operation of Stateline 1&2 would have no significant adverse impact on the ability of communities to provide public services.[322] In the Final Order on Amendment #2, the Council considered the potential

[319] Revised Request for Amendment #4, Exhibit S, p. 3.
[320] Email from Mike Pappalardo, February 13, 2009.
[321] In the *Final Order on the Application*, the Council applied *former* OAR 345-022-0110, which was then called the Socio-Economic Impacts Standard. The standard was substantially the same as the current Public Services Standard.
[322] The Council made findings and adopted conditions for Stateline 1 in the *Final Order on the Application* (September 14, 2001), p. 75. In accordance with amendments to ORS 469.501, the Council applied the conditions to Stateline 2 but did not make findings on compliance with the standard (*Final Order on Amendment #1* (May 17, 2002), p. 58.

impacts of the old Stateline 3 configuration on public services within a 30-mile radius of the site boundary. The Council determined that Conditions 31, 32, 33, 34, 35, 45, 48, 58, 60, 61, 71, 72, 73, 74, 77, 81, 85, 86, 87, 88, 96 and 103 should apply to the old Stateline 3 facilities.

The applicants provided information about the impacts of the new Stateline 3 configuration on public services in Exhibit U of the amendment request. The analysis area for the new Stateline 3 configuration is the area within the new Stateline 3 site boundary and the area within 10 miles from the site boundary.[323] The analysis area for the new Stateline 3 configuration lies entirely within the analysis area addressed by the Council for the old Stateline 3 configuration.[324]

In the request for Amendment #4, the applicants have proposed a new configuration for Stateline 3. The maximum number of turbines proposed in the new configuration is 67, which is substantially fewer than the 279 turbines approved by the Council for the old configuration. Because of the smaller size of the new Stateline 3 configuration, the potential public service impacts of construction and operation of the new Stateline 3 configuration would be reduced compared with the impacts of the old Stateline 3 configuration, as discussed further below. The Council finds that no new conditions related to public services are needed under the proposed amendment. The Council confirms that the conditions listed above (except Condition 87) apply to the new Stateline 3 configuration, subject to the recommended revisions discussed below beginning at page 128.

A. Sewage, Storm Water and Solid Waste

During construction and operation of Stateline 3, the impact on sewage treatment would be minimal. Wastewater from washdown of concrete trucks would be discharged into the foundation excavations at each turbine tower (Condition 72). Portable toilets would be provided for onsite sewage handling during construction and would be pumped and cleaned regularly by a licensed contractor (Condition 73). No other wastewater is anticipated to be generated during construction. During operation, wastewater generated at the O&M building would be discharged to an on-site septic system.

With the exception of minimal stormwater drainage facilities associated with public roads, there are no public stormwater services within the Stateline 3 site boundary. Condition 60 requires the certificate holder to conduct construction activities in accordance with the NPDES Storm Water Discharge General Permit #1200-C, which would ensure appropriate on-site handling of storm water.

There are no solid waste management services that serve the Stateline 3 site. Solid waste generated during construction and operation would be recycled to the extent practical. Conditions 73 and 86 require the certificate holder to recycle solid waste generated during construction and operation of the facility as much as feasible and to collect non-recyclable waste and transport it to a local landfill.

[323] OAR 345-001-0010(57).
[324] Compare Request for Amendment #4, Exhibit U, Figure U-1, with Revised Request for Amendment #2, Tab 19, Figures 15 and 16.

B. Water

For uses during construction, the new Stateline 3 configuration would require up to 8.7 million gallons of water, compared to an estimated maximum of 17 million gallons for construction of the old Stateline 3 configuration.[325] As discussed below at page 124, water for construction purposes would be provided subject to appropriate water rights and would not have an adverse impact on other water users in the area. During operation, water use would be primarily for sanitary purposes at the O&M building. Water use is not expected to exceed 1,000 gallons per day.[326] The water would be supplied from an on-site well and would have no adverse impact on public water services.

C. Housing, Police and Fire Protection, Health Care and Schools

Increases in population due to a temporary influx of construction workers potentially affect police and fire protection services, housing availability, health care services and schools. The applicants estimate that a maximum of 133 to 200 temporary new residents might be associated with construction of the new Stateline 3 configuration.[327] In contrast, construction of the old Stateline 3 configuration was anticipated to bring a maximum of 250 temporary new residents to the area.[328] The Council considered the potential impacts of temporary population increases during construction of the old Stateline 3 configuration and concluded that the impact to the ability of communities to provide housing, police and fire protection, health care and schools was not likely to be significant. Permanent population increases (for operational staff hired from outside the area) would not be significant under either the new or old Stateline 3 configurations.

D. Traffic Safety

Potential traffic safety impacts during construction are related to the estimated number of vehicle trips anticipated. To estimate the traffic impacts due to construction of Stateline 1, FPL Vansycle performed a complex, detailed analysis of the anticipated volume of construction vehicles of all types.[329] Based on this analysis, FPL Vansycle estimated that construction of the Stateline 1 facilities in Oregon would generate a total of 12,707 vehicle trips.[330] The analysis was based on assumptions regarding the quantities of materials or trips required for each turbine.

In assessing the potential traffic impacts for construction of the old Stateline 3 configuration, the Council assumed that the total number of vehicle trips would be in direct proportion to the number of turbines being built. Based on this assumption, the Council estimated that construction of the old Stateline 3 configuration would require 27,915 vehicle trips. Using the same analysis, construction of the new Stateline 3 configuration would require 6,704 vehicle trips and the potential traffic safety impacts would be greatly reduced. The applicants discussed the proposed transportation route with the Umatilla County Public Works Director and the Oregon Department of Transportation (ODOT). ODOT determined that no

[325] Revised Request for Amendment #4, Exhibit U, p. 19.
[326] Revised Request for Amendment #4, Exhibit O, p. 2
[327] Revised Request for Amendment #4, Exhibit U, p. 9.
[328] *Final Order on Amendment #2* (June 6, 2003), p. 96.
[329] Application for Site Certificate, Exhibit U, pp. 5-8 and 16-17.
[330] *Final Order on the Application* (September 14, 2001), p. 71.

significant alterations or improvements would be needed to State roadways or to areas outside of the right-of-way.[331] Condition 124 would require the certificate holder to use a transportation route approved by the County Public Works Director for all oversized and heavy load transport vehicles.

During operation, the anticipated permanent staff of up to eight employees would not significantly increase traffic in the analysis area. The use of area highways and local roads by employees during operation is not likely to result in a significant adverse impact on traffic safety.

(d) Waste Minimization

OAR 345-022-0120

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

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

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

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Proposed Conditions

In the Final Order on the Application, the Council made findings and adopted site certificate conditions regarding the solid waste and wastewater likely to be generated during the construction, operation and retirement of Stateline 1 and the impact on surrounding communities.[332] In the Final Order on Amendment #1, the Council applied the same conditions to Stateline 2.[333] In the Final Order on Amendment #2, the Council found that the type of waste generated by construction and operation of the old Stateline 3 configuration would be similar but proportionally greater in volume than the waste generated by construction and operation of Stateline 1&2, due to the greater number of wind turbines that would be built plus construction of a substation and aboveground transmission lines.[334] The Council applied Conditions 32, 71, 72, 73, 74, 83, 86 and 98 to the old Stateline 3 configuration.

Solid waste and wastewater generated by construction, operation and retirement of the new Stateline 3 configuration are likely to be similar in type to that generated by Stateline 1&

[331] Response to RAI, Exhibit U, p. 1.
[332] *Final Order on the Application* (September 14, 2001), pp. 76-77.
[333] *Final Order on Amendment #1* (May 17, 2002), p. 59.
[334] *Final Order on Amendment #2* (June 6, 2003), p. 98.

2 and lower in volume than the Council anticipated for the old Stateline 3 configuration. The Council confirms that the conditions listed above (except Condition 98) apply to the new Stateline 3 configuration, subject to the recommended modifications discussed below beginning at page 128.

V. OTHER APPLICABLE REGULATORY REQUIREMENTS: FINDINGS AND CONCLUSIONS

1. Requirements under Council Jurisdiction

Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-022-0000, the Council must determine that a facility complies with "all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility." Other Oregon statutes and administrative rules that are applicable to the changes requested in Amendment #4 include the DEQ noise control regulations, the regulations adopted by the Department of State Lands (DSL) for removal or fill of material affecting waters of the state, the Water Resources Department's (WRD) regulations for appropriating ground water and the Council's statutory authority to consider protection of public health and safety.

(a) Noise Control Regulations

The applicable noise control regulations are as follows:

OAR 340-035-0035
Noise Control Regulations for Industry and Commerce
(1) Standards and Regulations:
* * *

(b) New Noise Sources:
* * *

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

(iii) For noise levels generated or caused by a wind energy facility:

(I) The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 26 dBA or the actual ambient background level. The person owning the wind energy facility may conduct measurements to determine the actual ambient L10 and L50 background level.

(II) The "actual ambient background level" is the measured noise level at the appropriate measurement point as specified in subsection (3)(b) of this rule using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with windspeed measurements of hub height conditions at the nearest wind turbine location. "Actual ambient background level" does not include noise generated or caused by the wind energy facility.

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits specified in Table 8), if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L10 or L50 on the sensitive property by more than 10 dBA at the appropriate measurement point.

(IV) For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured. The facility complies with the noise ambient background standard if this comparison shows that the increase in noise is not more than 10 dBA over this entire range of wind speeds.

(V) For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when the facility's nearest wind turbine is operating over the entire range of wind speeds between cut-in speed and the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured, is not more than 10 dBA over this entire range of wind speeds.

(VI) For purposes of determining whether a proposed wind energy facility would satisfy the Table 8 standards, noise levels at the appropriate measurement point are predicted by using the turbine's maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all

of the proposed wind facility's turbines are operating at the maximum sound power level.

(VII) For purposes of determining whether an operating wind energy facility satisfies the Table 8 standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility's nearest wind turbine is operating at the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled.

* * *

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1, the Council concluded that Stateline 1&2 would comply with the State noise control regulations. The Department has received no complaints about noise produced by the operation of Stateline 1&2 wind turbines. Amendment #4 would change the site boundary of the SWP and authorize the construction of a new Stateline 3 configuration. The Council must decide, therefore, whether the noise generated by the operation of the SWP with the proposed Stateline 3 components would comply with the noise control regulations.[335] In Oregon, noise is subject to regulation "to provide protection of the health, safety and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions."[336] The applicable noise standard is OAR 340-035-0035(1)(b)(B), which applies to a new industrial or commercial noise source located on a previously unused site.

In 2004, after the Council's decision on Amendment #2 approving the old Stateline 3 configuration, the Oregon Environmental Quality Commission adopted amendments to OAR 340-035-0035(1)(b)(B) that changed how the noise regulations apply to wind facilities. Under the amended regulations, the noise from the facility must comply with two tests. The noise must not exceed the maximum allowable limit of 50 dBA (the maximum allowable test) and must not increase ambient noise levels by more then 10 dBA at any noise sensitive property (the ambient degradation test).[337] OAR 340-035-0035(1)(b)(B)(iii)(III) relieves the applicant from having to show compliance with the ambient degradation test "if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located" (a "noise waiver").

The applicants provided information regarding compliance with the noise regulations in Exhibit X of the amendment request. The applicants hired Tetra Tech EC (TETRA TECH) to perform an acoustical analysis and interpret the results.[338] The analysis evaluated the noise generated by a 46-turbine layout (the proposed 43 turbine locations plus 3 alternative turbine locations) using Siemens SWT 2.3 MW turbine noise specifications and a 70-turbine layout (the proposed 67 turbine locations plus 3 alternative turbine locations) using GE 1.5 MW SLE turbine noise specifications.[339] TETRA TECH also considered noise generated by

[335] OAR 340-035-0035(5)(g) exempts noise generated by construction activities.
[336] ORS 467.010.
[337] The "maximum allowable" limit is 50 dBA based on Table 8, which is referenced in the DEQ regulations. The Table 8 limits are shown in the Final Order on Amendment #2 (June 6, 2003), p. 101.
[338] Response to RAI, Exhibit X, p. 9.
[339] Revised Request for Amendment #4, Exhibit X, p. 10, Response to RAI, Exhibit X, p. 1, and email from

transformers on the Stateline 3 site, but concluded that transformers located at the base of the turbines "likely will be inaudible at residential receptor locations given current Facility setback requirements."[340] The analysis did not include noise generated by the proposed substation transformer. The applicants stated that substation transformers "will be reviewed by the Construction Engineer as the Facility enters the detailed design phase" and "noise mitigation measures such as the use of NEMA low noise transformers may be required to meet the ODEQ environmental noise regulations."[341]

TETRA TECH performed noise modeling using Datakustic GmbH's CadnaA (v. 3.7) and presented the results of noise predictions for 23 noise sensitive receivers in Tables X-6 and X-7 and in Figures X-2a and X-2b of the amendment request. The Department consulted with Kerrie Standlee of Daly Standlee and Associates to review and confirm TETRA TECH's findings. The predicted levels are shown in Table 9 below.

Table 9: Predicted Noise Levels

Receiver	Predicted Maximum SWP Facility Generated Hourly L_{50} Noise Level (dBA) with GE 1.5-MW Turbines	Predicted Maximum SWP Facility Generated Hourly L_{50} Noise Level (dBA) with Siemens 2.3-MW Turbines
R1	41	33
R2	39	34
R3	44	44
R4	25	25
R5	26	27
R6	25	27
R7	26	27
R8	41	42
R9	28	28
R10	30	30
R11	21	21
R12	20	20
R13	20	20
R14	20	19
R15	26	28
R16	31	31
R17	33	29
R18	32	31
R19	22	22
R20	24	24
R21	23	23
R22	21	22
R23	23	24

Mike Pappalardo, February 17, 2009.

[340] Revised Request for Amendment #4, Exhibit X, p. 8.

[341] Revised Request for Amendment #4, Exhibit X, p. 8.

The applicants considered the effect of the existing Stateline 1&2 wind turbines on the noise sensitive properties listed in the table, but because the nearest Stateline 1&2 turbines are more than two miles from these properties, no cumulative adverse noise effects are expected.[342] Likewise, the Stateline 3 wind turbines are not expected to have cumulative noise effects on noise sensitive properties previously analyzed for impacts from Stateline 1&2.

Based on the data shown in Table 9, noise generated by the SWP including the proposed Stateline 3 components, would comply with the maximum-allowable test at all noise sensitive properties that would be affected by noise from Stateline 3. That is, the noise generated by operation of the facility would not exceed the night-time L_{50} noise limit of 50 dBA at any noise sensitive receptor.

In assessing the predicted noise levels relative to the ambient degradation test, the applicant elected to use the 26-dBA ambient noise level for all receptors, as allowed in OAR 340-035-0035(1)(b)(B)(iii)(I). Based on the data shown in Table 9, noise generated by the SWP, including the proposed Stateline 3 components, would exceed the 10-dBA ambient degradation test at four noise sensitive properties (indicated by underscore in the table) if the GE 1.5-MW SLE or XLE turbine layout is used or at two noise sensitive properties if the Siemens SWT 2.3-MW turbine layout is used. TETRA TECH analyzed compliance with the ambient-degradation test using a "worst-case" approach, which included additional wind turbines in alternative locations, as stated above.[343] The facility could comply with the noise control regulations if the certificate holders obtained noise waivers from the property owners of the affected properties.

To ensure that the SWP would comply with the noise control regulations if the Stateline 3 components are built, the Council adopts Condition 133. This condition would require the certificate holders to provide information about the turbines selected and about the final design layout for Stateline 3 to the Department before beginning construction of Stateline 3 components. The condition requires the certificate holder to demonstrate to the satisfaction of the Department that the facility, with the Stateline 3 components built according to the final design layout, would comply with the applicable noise control regulations.

Condition 78 requires the certificate holder to confine the noisiest construction activities to the daylight hours. In Revision 74, the Department recommends modification of Condition 120 to require verification that the actual sound output of the Stateline 3 wind turbines meets the manufacturer's warranty. The Council confirms that Conditions 78 and 120 apply to Stateline 3.

Under OAR 340-035-0035(4)(a), DEQ has authority to require the owner of an operating noise source to monitor and record the statistical noise levels upon written notification. In the event of a complaint regarding noise levels during operation of the SWP,

[342] Response to RAI, Exhibit X, p. 8.

[343] The applicants described the "worst-case" approach as follows: "Although not initially intuitive, the operational noise condition in terms of perceptibility will not actually occur at full rated power when the WTG is at its maximum noise emission level, but at some wind speed and resultant operational condition that occurs between cut-in and full rotational, when masking noise is lower relative to WTG operational noise at receiver locations. A worst-case analysis is presented by comparing the minimum assumed ambient condition to the calculated maximum operational sound level…" (Revised Request for Amendment #4, Exhibit X, p. 12).

the Council has the authority to act in the place of DEQ to enforce this provision to verify that the certificate holder is operating the facility in compliance with the noise control regulations. Under Condition 2, the certificate holders are required to operate the facility in accordance with all applicable state laws and administrative rules. The Council adopts Condition 134, which requires the certificate holder to notify the Department of any complaints received about noise from the facility as well as the actions taken to address them.

Conclusions of Law

For the reasons discussed above and subject to the conditions described herein, the Council concludes that the SWP would comply with the applicable noise control regulations in OAR 340-035-0035 if Amendment #4 were approved.

(b) Removal-Fill Law

The Oregon Removal-Fill Law (ORS 196.800 through .990) and DSL regulations (OAR 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of material is removed, filled or altered within any "waters of the state" at the proposed site.[344] The USACE administers Section 404 of the Clean Water Act, which regulates the discharge of fill into waters of the United States, and determines whether a Nationwide or Individual Section 404 fill permit is required.

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1, the Council found that a Removal/Fill Permit was not needed for construction of the Stateline 1&2 components. In Exhibit J of the amendment request, the applicants provided information about waters of the state potentially affected by construction of the new Stateline 3 components. A delineation report was prepared for the applicants by TETRA TECH.[345] The report was submitted to DSL for review.

TETRA TECH evaluated the site for presence of federal or State jurisdictional waters. After identifying potential wetlands and waters based on mapping evidence, TETRA TECH conducted on-site delineation surveys on August 6-8, August 20-22 and October 14-16, 2008, following the procedures in the USACE *Wetland Delineation Manual* (Environmental Laboratory, 1987) and the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (USACE 2006).

TETRA TECH did not find any wetlands within the project area.[346] TETRA TECH delineated two unnamed perennial streams and one intermittent stream and determined that these three streams are potentially jurisdictional under both State and federal regulations.[347] The potentially jurisdictional streams are listed in Table J-1 of the amendment request.

The proposed 230-kV transmission line would cross the three potentially-jurisdictional streams, but the applicants propose to avoid impacts by spanning the transmission line over

[344] OAR 141-085-0010(225) defines "Waters of this State." The term includes wetlands and certain other water bodies.
[345] *Delineation of Wetlands and Other Waters, Stateline 3 Wind Energy Project*, October 2008 (Revised Request for Amendment #4, Exhibit J, Appendix J-1).
[346] Revised Request for Amendment #4, Exhibit J, Appendix J-1, p. 6.
[347] Revised Request for Amendment #4, Exhibit J, Appendix J-1, p. 13.

the streams.[348] No removal or fill within the stream channels would be needed. The applicants would construct transmission line access roads and support structures no closer than the top of bank on each side of the jurisdictional streams. In Revision 73, the Department recommends modification of Condition 118 to clarify the limitation of removal or fill allowed without a permit and to ensure that potentially-jurisdictional streams are avoided as described herein. DSL has reviewed the amendment request and has expressed no concerns to the Department.[349]

Conclusions of Law

For the reasons discussed above, the Council concludes that a Removal/Fill Permit would not be required for the SWP, subject to the site certificate conditions described herein, if Amendment #4 were approved.

(c) Ground Water Act

Through the provisions of the Ground Water Act of 1955, ORS 537.505 to ORS 537.796, and OAR Chapter 690, the Oregon Water Resources Commission administers the rights of appropriation and use of the ground water resources of the state. Under OAR 345-022-0000(1), the Council must determine whether the proposed Stateline 3 complies with these statutes and administrative rules.

Findings of Fact

In the Final Order on the Application and the Final Order on Amendment #1, the Council found that a new or transferred water right was not needed for construction or operation of the Stateline 1&2 components of the SWP facility.

OWRD has reviewed the amendment request and expressed no concerns to the Department. The applicants estimate that up to 8.7 million gallons of water would be needed for road and earthwork compaction, dust suppression and concrete mixing during construction of the proposed Stateline 3 components.[350] Construction could consume up to 120,000 gallons of water per day, but the average usage would be approximately 60,000 gallons per day. The primary source of water is expected to be the City of Helix. The amendment request includes a letter from the Mayor of Helix indicating the City's willingness to supply up to 120,000 gallons of water per day for the proposed Stateline 3 facility under the City's existing municipal water right.[351]

The applicants propose to obtain water from a private landowner as an alternate source of water for construction of Stateline 3. The applicants' contractor has applied for a Limited License to use this water.[352]

During operation of the proposed Stateline 3, water would be used at the O&M building, primarily for domestic purposes in the restrooms, kitchen and utility sinks. The applicants do not expect water use to exceed 1,000 gallons per day.[353] Water would be

[348] Revised Request for Amendment #4, Exhibit J, p. 4.
[349] Email from Jess Jordan, DSL, February 13, 2009
[350] Revised Request for Amendment #4, Exhibit U, p. 19.
[351] Revised Request for Amendment #4, Exhibit O, Appendix O-1.
[352] Response to RAI O1 and Attachment 5.
[353] Revised Request for Amendment #4, Exhibit O, p. 2.

supplied from a new on-site well. ORS 537.545(1)(f) provides that a new water right is not required for industrial and commercial uses of up to 5,000 gallons per day. The Council adopts Condition 130, which addresses the use of water from the proposed new on-site well.

Conclusions of Law

Based on the findings discussed above and subject to the site certificate conditions discussed herein, the Council concludes that the SWP would comply with applicable regulations pertaining to water rights if Amendment #4 were approved.

(d) Public Health and Safety

Under ORS 469.310, the Council is charged with ensuring that the "siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety...." State law further provides that "the site certificate shall contain conditions for the protection of the public health and safety…." ORS 469.401(2).

Findings of Fact

We discuss the Council's Public Health and Safety Standards for wind energy facilities above at page 96. In this section below, we discuss the issues of fire protection, magnetic fields and coordination with the Oregon Public Utility Commission.

A. Fire Protection

In the Final Order on the Application, the Final Order on Amendment #1 and the Final Order on Amendment #2, the Council made findings and adopted conditions regarding fire prevention and response for Stateline 1&2.[354] In the Final Order on Amendment #2, the Council made findings regarding fire protection measures and site certificate conditions applicable to the old Stateline 3 configuration.[355] The fire risks for the new Stateline 3 configuration are similar to the risks previously considered by the Council. The Council confirms that site certificate conditions addressing fire protection and response apply to Stateline 3. Applicable conditions include Conditions 31, 33, 34, 58, 96 and 103.

The applicants consulted with Rick Saager, Chief of the Milton-Freewater Rural Fire Department regarding fire and ambulance services. Based on his recommendations, the applicants agreed to position a 3,000-gallon water truck on-site during construction.[356] Revision 82 incorporates this agreement.

B. Magnetic Fields

Electric transmission lines create both electric and magnetic fields. The electric fields associated with the proposed transmission lines are addressed above at page 101.

In the Final Order on the Application and the Final Order on Amendment #1, the Council concluded that there would be no significant risk to public health and safety from the magnetic field generated by the underground 34.5-kV collector system based on a calculated

[354] *Final Order on the Application* (September 14, 2001), pp. 73-75, and *Final Order on Amendment #1*, p. 58.
[355] *Final Order on Amendment #2* (June 6, 2003), p. 42 (in reference to UCDC § 152.616(T)) and p. 96 (in reference to OAR 345-022-0110).
[356] Response to RAI, Exhibit U, pp. 5-6, and Attachment 9.

magnetic field strength of 60 milligauss (mG).[357] The applicants estimated the magnetic field that would be produced by the underground collector lines for the proposed Stateline 3 using BPA's Corona and Field Effects Program (Version 3).[358] The analysis provided calculated magnetic fields for two cases: the field produced by an isolated single cable and the field produced by three parallel 34.5-kV circuits. The calculated magnetic field strength is at its maximum directly over the buried cable. For the isolated cable, maximum calculated field strength is 22.8 mG; for the parallel cables, the maximum calculated field strength is 31.8 mG.

The Stateline 1&2 facilities do not include any aboveground transmission lines. The proposed Stateline 3 facilities include an aboveground 230-kV transmission line. The calculated magnetic field strength is 304 mG.[359]

Due to the absence of scientific consensus regarding the possible health effects of exposure to magnetic fields, there is no Oregon standard limiting the allowable magnetic field strength associated with transmission lines.[360] The Council has encouraged applicants to practice "prudent avoidance" and to propose low-cost ways to reduce or manage public exposure to magnetic fields from transmission lines under the Council's jurisdiction.

Condition 108 addresses prudent avoidance measures to reduce human exposure to magnetic fields. The Council confirms that Condition 108 is applicable to Stateline 3.

C. Coordination with the PUC

The Oregon Public Utility Commission Safety and Reliability Section (PUC) has requested that the Council ensure that certificate holders coordinate with PUC staff on the design and specifications of electrical transmission lines and the natural gas pipelines. The PUC has explained that others in the past have made inadvertent, but costly, mistakes in the design and specifications of power lines and pipelines that could have easily been corrected early if the developer had consulted with the PUC staff responsible for the safety codes and standards. Condition 110 requires the certificate holder to coordinate the design of electric transmission lines with the PUC. The Council confirms that Condition 110 is applicable to Stateline 3.

Conclusions of Law

Based on the findings discussed above and subject to the site certificate conditions discussed herein, the Council concludes that the SWP would comply with requirements to protect public health and safety if Amendment #4 were approved.

[357] *Final Order on the Application* (September 14, 2001), p. 85, and *Final Order on Amendment #1*, p. 63.
[358] Revised Request for Amendment #4, Exhibit AA, p. 6.
[359] Revised Request for Amendment #4, Exhibit AA, p. 6. Transmission line design assumptions were the same as used for electric field calculations discussed above at page 101.
[360] A recent discussion of magnetic field effects is included in the Final Order on the Application for the Shepherds Flat Wind Farm, pp. 139-141.

2. Requirements That Are Not Under Council Jurisdiction

(a) Federally-Delegated Programs

Under ORS 469.503(3), the Council does not have jurisdiction for determining compliance with statutes and rules for which the federal government has delegated the decision on compliance to a state agency other than the Council. Nevertheless, the Council may rely on the determinations of compliance and the conditions in the federally-delegated permits issued by these state agencies in deciding whether the proposed facility meets other standards and requirements under its jurisdiction.

As required under Condition 60, the certificate holder would conduct all construction work in compliance with an Erosion and Sediment Control Plan satisfactory to the Oregon Department of Environmental Quality and as required under the federally-delegated National Pollutant Discharge Elimination System Storm Water Discharge General Permit #1200-C. The Council confirms that Condition 60 applies to Stateline 3.

(b) Requirements That Do Not Relate to Siting

Under ORS 469.401(4), the Council does not have authority to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include design-specific construction or operating standards and practices that do not relate to siting. Nevertheless, the Council may rely on the determinations of compliance and the conditions in the permits issued by these state agencies and local governments in deciding whether the facility meets other standards and requirements under its jurisdiction.

VI. GENERAL APPLICATION OF CONDITIONS

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

In addition to all other conditions referenced or included in this order, the site certificate holder is subject to all conditions and requirements contained in the rules of the Council and in local ordinances and state law in effect on the date the amended site certificate is executed.[361] Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules.

[361] With regard to land use, the applicable local criteria are those in effect on the date the certificate holder submitted the request for amendment.

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

VII. GENERAL CONCLUSION

The proposed amendment would authorize a reconfigured third phase of construction (Stateline 3) and would partially transfer the Site Certificate from the current certificate holder (FPL Vansycle) to FPL Stateline. The Council adopts revisions to the Site Certificate as described in the section that follows. The Council's findings regarding a reasonable estimate of the cost to restore Stateline 1&2 to a useful, non-hazardous condition (Condition 80) and a reasonable estimate of the cost to restore Stateline 3 to a useful, non-hazardous condition (Condition 109) are stated on page 174 of this order.

Based on the findings and conclusions discussed above regarding the proposed amendment, the Council makes the following findings:

1. The transferee, FPL Stateline, complies with the standards described in OAR 345-022-0010 and OAR 345-022-0050 and is lawfully entitled to possession or control of Stateline 3 as described in the site certificate as amended by this order.
2. The proposed Amendment #4 complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619.
3. The proposed Amendment #4 complies with the applicable standards adopted by the Council pursuant to ORS 469.501.
4. The proposed Amendment #4 complies with all other Oregon statutes and administrative rules applicable to the amendment of the site certificate for the SWP that are within the Council's jurisdiction.

Accordingly, the Council finds that the facility complies with the General Standard of Review (OAR 345-022-0000). The Council concludes, based on a preponderance of the evidence on the record, that the site certificate may be amended as requested by the certificate holder, subject to the revisions recommended by the Department and set forth below.

1. The Department's Recommended Revisions

New text proposed by the Department shown with single underline. New text proposed by the applicants with concurrence by the Department is shown with double underline. Text proposed by the applicants but not recommended by the Department is not shown.[362] Deletions are shown with a strikethrough. The parenthetical references in square brackets follow standard practice and provide a historical reference of when changes were made to the Site Certificate. Page references are to the Third Amended Site Certificate (June 20, 2005).

[362] All changes to the Site Certificate proposed by the applicants are shown in a red-line markup of the Third Amended Site Certificate included in the Revised Request for Amendment #4.

Revision 1

Page 1, lines 2-6:

The Energy Facility Siting Council ("Council") issues this site certificate for the Stateline Wind Project in the manner authorized under ORS Chapter 469. This site certificate is a binding agreement between the State of Oregon ("State"), acting through the Council, and the certificate holders. The certificate holders are FPL Energy Vansycle LLC ("FPL Vansycle" ~~or "certificate holder"~~) and FPL Energy Stateline II, Inc. ("FPL Stateline"). This site certificate ~~authorizing the FPL~~authorizes the certificate holders to construct and operate the Stateline Wind Project (the "facility) in Umatilla County, Oregon. [Amendment #4]

Explanation

This revision adds FPL Stateline as a certificate holder under the Site Certificate.

Revision 2

Page 1, lines 7-26:

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's Final Order in the Matter of the Application for a Site Certificate for the Stateline Wind Project ("Final Order on the Application"), issued on September 14, 2001, (b) the Council's Final Order in the Matter of the Request for Amendment #1 of the Site Certificate for the Stateline Wind Project ("Final Order on Amendment #1"), (c) the Council's Final Order in the Matter of the Request for Amendment #2 of the Site Certificate for the Stateline Wind Project ("Final Order on Amendment #2"), ~~and~~ (d) the Council's Final Order in the Matter of the Request for Amendment #3 of the Site Certificate for the Stateline Wind Project ("Final Order on Amendment #3~~).~~") and (e) the Council's Final Order in the Matter of the Request for Amendment #4 of the Site Certificate for the Stateline Wind Project ("Final Order on Amendment #4"). [Amendments #1, #2, ~~and~~ #3 and #4]

~~Where this site certificate refers to attachments "to the final order," the applicable final orders are as follows:~~

- ~~Attachment A: Final Order on Amendment #3~~
- ~~Attachment B: Final Order on Amendment #2~~
- ~~Attachment C: Final Order on Amendment #2~~ [Text added here by Amendment #3 was deleted by Amendment #4]

In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: this Fourth Amended Site Certificate, the Final Order on Amendment #4~~Third Amended Site Certificate~~, the Final Order on Amendment #3, the Final Order on Amendment #2, the Final Order on Amendment #1, the Final Order on the Application and the record of the proceedings that led to the Final Orders on the Application and Amendments #1, ~~and~~ #2, #3 and #4. [Amendments #1, #2, ~~and~~ #3 and #4]

Explanation

This revision adds a reference in the Site Certificate to the findings of fact, reasoning and conclusions in support of the present amendment. The revision establishes the order of priority in which the underlying documents should be considered in resolving any ambiguity. The revision deletes the bulleted list of attachments and applicable final orders. The Department recommends this deletion to reduce potential confusion. Instead, other revisions below would clarify the applicable orders for the attachments.

Revision 3

Page 1, lines 30-33:

To the extent authorized by state law and subject to the conditions set forth herein, the State authorizes FPL Vansycle to construct, operate and retire Stateline 1&2 and authorizes FPL Stateline to construct, operate and retire Stateline 3 ~~a wind energy facility, together with certain related or supporting facilities, at the site in Umatilla County, Oregon~~, as described in Section III of this site certificate. ORS 469.401(1). [Amendment #4]

Explanation

This revision provides for separate authorization of FPL Vansycle and FPL Stateline to construct, operate and retire the separate phases of construction of the SWP. Those separate phases, identified as "Stateline 1&2" and "Stateline 3" are described in Revisions 6, 7, 8 and 9 below.

Revision 4

Page 2, lines 1-7:

3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Orders on the Application and Amendments #1, #2, ~~and~~ #3 and #4. These matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. ORS 469.503(3). [Amendments #1, #2, ~~and~~ #3 and #4]

Explanation

This revision adds the matters addressed in the Final Order on Amendment #4 to the scope of matters addressed in the Site Certificate.

Revision 5

Page 2, lines 8-16:

4. ~~Both the~~The State and the certificate holders shall abide by local ordinances, state law and the rules of the Council in effect on the date this site certificate is executed. ORS 469.401(2). In addition, upon a clear showing of a significant threat to public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules. ORS 469.401(2). [Amendment #4]

5. For a permit, license or other approval addressed in and governed by this site certificate, the certificate holders shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules. ORS 469.401(2). [Amendment #4]

Explanation

This revision makes minor changes in the text to reflect two certificate holders: FPL Vansycle and FPL Stateline.

Revision 6

Page 2, lines 34-41, and page 3, lines 1-11:

III. DESCRIPTIONS AND DIVIDED RESPONSIBILITY

1. ~~The Facility~~Stateline 1&2

(i) Major Structures

~~The Stateline Wind Project ("facility")~~Stateline 1&2 consists of up to 187 Vestas V47-660-kilowatt (kW) wind turbines, each having a peak generating capacity of 0.66 MW.[363] ~~:~~

- ~~**Stateline 1:** No more than 127 Vestas V47-660-kilowatt (kW) wind turbines authorized for construction, of which 126 were built, having a total a nominal electric generating capacity of 83.2 megawatts (MW) (126 turbines, each with a capacity of 0.66 MW) as described further in the Final Order on the Application.~~
- ~~**Stateline 2:** No more than 60 Vestas V47-660-kkW wind turbines with a total a nominal electric generating capacity of 39.6 MW (60 turbines, each with a capacity of 0.66 MW) as described further in the Final Order on Amendment #1.~~
- ~~**Stateline 3:** No more than 279 Vestas V47-660-kW wind turbines with a total nominal electric generating capacity of 184.1 MW (279 turbines, each with a capacity of 0.66 MW) as described further in the Final Order on Amendment #2.~~

Each wind turbine is connected to a 34.5-kilovolt (kV) collector system. The wind turbines are grouped in "strings" of turbines, each turbine spaced approximately 250 feet from the next, generally slightly downwind of the crest of ridges. Major facility structures are further as described in the Final Orders on the Application and Amendments #1, ~~and~~ #2 and #4. [Amendments #1, ~~and~~ #2 and #4]

Explanation

This revision identifies the major structures that are part of the Stateline 1&2 components of the SWP.

Revision 7

Page 3, lines 12-20:

(ii) Related or Supporting Facilities

~~The facility~~Stateline 1&2 includes the following related or supporting facilities described below and in greater detail in the Final Order on Amendment #4:

- Access roads to reach each turbine for construction and maintenance
- Underground ~~and aboveground~~ collector cables that transmit the electrical output of the wind turbines to a substation~~s~~ in ~~Oregon and~~ Washington [Amendments #2 and #4]
- ~~A substation~~ [Text added by Amendment #2 was deleted by Amendment #4]
- ~~A 115-kV or 230-kV transmission line~~ [Text added by Amendment #2 was deleted by Amendment #4]
- Meteorological towers
- A satellite operations and maintenance building

[363] The site certificate authorizes up to 187 turbines, but the certificate holder chose to build 186.

Explanation

This revision identifies the related or supporting facilities for Stateline 1&2. The revision deletes components that were part of the old Stateline 3 configuration.

Revision 8

Page 3, lines 29-42, and page 4, lines 1-10:

Collector System~~, Substation and Transmission Line~~

The ~~proposed~~ wind turbines generate power at 690 volts. A transformer adjacent to each tower transforms the power to 34.5 kV. From the turbines~~, in Range 32 E,~~ power is transmitted via an underground 34.5-kV collector system~~electric cables buried directly in the soil approximately 3 to 4 feet below the ground surface~~ to a substation in Washington. ~~In some cases, trenches run from the end of one turbine string to the end of an adjacent turbine string to link the turbines via the underground network. From most of the turbines in Range 33 E, aboveground 34.5-kV transmission linestransmit power to a substation in Township 6 N, Range 33 E, Section 1 (tentatively called "North Star Substation").~~ Overhead transmission lines, located entirely within Washington, connect the Washington substation to a BPA 115-kV transmission line north of the Walla Walla River and to a PacifiCorp substation just north of Highway 12.~~ An 8.5-mile aboveground 115-kV or 230-kV transmission line connects the North Star Substation to existing major transmission lines in Washington. The collector system is further as described in the Final Orders on the Application and Amendments #1 and #2.~~ [Amendments #1, ~~and~~ #2 and #4]

Meteorological Towers

~~The facility~~Stateline 1&2 includes ~~nineteen~~up to six permanent meteorological (met) towers to measure wind conditions. The met towers ~~may be guyed or~~are unguyed towers. ~~The met towers are otherwise as described in the Final Orders on the Application and Amendments #1 and #2.~~ [Amendments #1, ~~and~~ #2 and #4]

Satellite O&M Building

~~The facility~~Stateline 1&2 includes an operation and maintenance (O&M) facility, which is a satellite to the primary O&M facility located in Washington. The satellite O&M facility is located along Butler Grade Road south of Gardena and just south of the state line in Oregon.~~ It is further as described in the final order.~~ [Amendment #4]

Explanation

This revision revises the descriptions of related or supporting facilities applicable to Stateline 1&2.

Revision 9

Page 4, following line 10:

2. Stateline 3

(i) Major Structures

Stateline 3 consists of up to 67 GE 1.5-MW wind turbines or up to 43 Siemens 2.3-MW wind turbines. If 1.5-MW turbines are used, Stateline 3 would have a combined peak generating capacity of up to 100.5 MW. If 2.3-MW turbines are used, Stateline 3 would have a combined peak generating capacity of up to 98.9 MW. Major facility structures are further as described in the Final Order on Amendment #4. [Amendment #4]

(ii) Related or Supporting Facilities

Stateline 3 includes the following related or supporting facilities described below and in greater detail in the Final Order on Amendment #4:

- Access roads to reach each turbine for construction and maintenance
- Underground collector cables that transmit the electrical output of the wind turbines to a substation
- A substation
- A 230 -kV transmission line
- Meteorological towers
- An operations and maintenance building

[Amendment #4]

Access Roads

County roads that extend south from Highway 12 in Washington (e.g., Hatch Grade Road and Butler Grade Road) and north from Oregon Highway 11 (e.g., Vansycle Canyon Road and Butler Grade Road) are the primary routes of access to the facility site. From the county roads, a web of private farm roads provides access to most of the ridges upon which the facility is located. Additional access roads are located along the length of each turbine string and connecting each turbine string to the next. [Amendment #4]

Collector System, Substation and Transmission Line

The wind turbines generate power at 690 volts. A transformer adjacent to each tower transforms the power to 34.5 kV. From the turbines, power is transmitted via an underground 34.5-kV collector system to a substation located in Township 5 North, Range 34 East. Approximately 16 miles of aboveground 230-kV transmission line (13 miles in Oregon) connects the Stateline 3 substation to existing major transmission lines in Washington. [Amendment #4]

Meteorological Towers

Stateline 3 includes two permanent meteorological (met) towers. The met towers are unguyed towers. [Amendment #4]

O&M Building

Stateline 3 includes an O&M building near the intersection of Wayland Road and Gerking Flat Road north of Helix. [Amendment #4]

Explanation

This revision adds a description of the Stateline 3 components of the SWP.

Revision 10

Page 4, lines 11-16

~~2~~3. Location of the ~~Proposed~~ Facility

The facility is located in Umatilla County, north and east of Helix, Oregon. The towns closest to the facility are Helix, Oregon, and Touchet, Washington. The wind turbines would be located on ridges east of the Columbia River and south of the Walla Walla River. The location of the facility is further as described in the Final Orders on the Application and Amendments #1, ~~and~~ #2 and #4. [Amendments #1, ~~and~~ #2 and #4]

Explanation

This revision adds a reference to further location description contained in the Final Order on Amendment #4. This section applies to the SWP as a whole.

Revision 11

Page 4, following line 16:

4. Responsibility for Stateline 1&2 and Stateline 3

FPL Vansycle shall be individually responsible for compliance with all conditions relating to Stateline 1&2, and FPL Stateline shall not be jointly responsible for such compliance. FPL Stateline shall be individually responsible for compliance with all conditions relating to Stateline 3 and FPL Vansycle shall not be jointly responsible for such compliance. If the Council or the Oregon Department of Energy ("Department") determines that a violation of the Site Certificate or any Council order pertaining to the facility may have occurred, the Council or the Department may direct appropriate inquiries to the responsible entity. If the Council or the Department is unable to determine which entity is responsible, the Council or the Department may direct appropriate inquiries to both entities. [Amendment #4]

Explanation

This revision provides for the separate responsibilities of the two entities, FPL Vansycle and FPL Stateline. Each entity would be responsible for compliance with those conditions related to its part of the facility.

Revision 12

Page 4, lines 17-29:

IV. CONDITIONS ~~FOR STATELINE 1~~ REQUIRED BY COUNCIL RULES

This section lists conditions specifically required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) and in OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities). These conditions should be read together with the additional specific facility conditions in section V to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24 and to protect the public health and safety. ~~These conditions apply to Stateline 1.~~ [Amendments #1 and #4]

The Council recognizes that many specific tasks related to the design, construction, operation and retirement of the facility will be undertaken by ~~FPL's~~ agents or contractors. However, ~~the certificate holder~~FPL Vansycle is responsible for ensuring compliance with all provisions of the site certificate pertaining to Stateline 1&2, and FPL Stateline is responsible for ensuring compliance with all provisions of the site certificate pertaining to Stateline 3. [Amendment #4]

Citation to the sources of, or basis for, ~~the~~certain conditions are shown in parentheses.[364] Conditions are numbered continuously throughout sections IV ~~and V~~through IX of this site certificate. [Amendment #4]

In applying the conditions in this section, "certificate holder" means FPL Vansycle with regard to Stateline 1&2 and FPL Stateline with regard to Stateline 3. [Amendment #4]

[364] References to the site certificate application are to the application as modified by the supplement and later revisions, abbreviated as "App."

Explanation

These revisions clarify that those site certificate conditions that are required by Council rules are applicable to both Stateline 1&2 and Stateline 3. The revisions reflect the separate responsibilities of FPL Vansycle for compliance with the conditions as they relate to Stateline 1&2 and FPL Stateline for compliance with the conditions as they relate to Stateline 3.

Revision 13

Page 5, lines 6-8:

(3) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate. (345-027-0020(4))

See conditions (24), (97) and (106). [Amendment #4]

Explanation

This revision adds cross-references to the construction deadlines for the Stateline 2 and Stateline 3 phases of construction.

Revision 14

Page 5, lines 16-23:

(6) For the related or supporting transmission lines:

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

(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line. (OAR 345-027-0023(~~5~~6)) [Amendment #4]

Explanation

This revision updates the cross-reference to the applicable Council rule.

Revision 15

Page 5, lines 24-41:

(7) The following general monitoring conditions apply:

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

(b) The certificate holder shall implement the approved monitoring programs described in section (a) and monitoring programs required by permitting agencies and local governments.

(c) For each monitoring program described in sections (a) and (b), the certificate holder shall have quality assurance measures approved by the ~~Office~~Department before beginning construction or, as appropriate, before beginning commercial operation.

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

(OAR 345-027-0028) [Amendment #4]

Explanation

This revision conforms Condition 7 to the Council's amendment of OAR 345-027-0028 effective May 15, 2007.

Revision 16

Page 5, line 42, through page 7, line 8:

(8) The certificate holder shall report according to the following requirements:

(a) General reporting obligation for ~~non-nuclear~~energy facilities under construction or operating:

(i) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the ~~Council~~Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall include such information related to construction as specified in the site certificate. When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule~~;~~.

(ii) ~~The certificate holder shall, within 120 days after the end~~By April 30 of each ~~calendar~~ year after beginning construction, the certificate holder shall submit an annual report to the ~~Council~~Department addressing the subjects listed in this rule. The Council S~~s~~ecretary and the certificate holder may, by mutual agreement, change the reporting date.

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

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

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

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

~~(A) The plant availability and capacity factors for the reporting year. If equipment failures or plant breakdowns had a significant impact on those factors, the certificate holder shall describe them and its plans to minimize or eliminate their recurrence;~~

(iii) Fuel Use: For thermal power plants:

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

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

(~~iii~~iv) Status of Surety Information: Documentation demonstrating that the bonds or letters of credit as described in the site certificate ~~or other security described in OAR 345-027-0020(8) or the financial mechanism or instrument described in OAR 345-027-0020(9) is~~are in full force and effect and will remain in full force and effect for the term of the next reporting period~~;~~.

~~(iv) Industry Trends: A discussion of any significant industry trends that may affect the operations of the facility;~~

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

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

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

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

(OAR 345-026-0080) [Amendment #4]

Explanation

This revision conforms Condition 8 to the Council's amendment of OAR 345-026-0080 effective May 15, 2007.

Revision 17

Page 7, lines 9-19:

(9) ~~The certificate holder shall promptly notify the Office of Energy of any changes in major milestones for construction, decommissioning, operation or retirement schedules. Major~~

~~milestones are those identified by the certificate holder in its construction, retirement or decommissioning plan. (OAR 345-026-0100)~~[Condition removed by Amendment #4]

(10) The certificate holder and the ~~Office~~Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the ~~Office of Energy~~Department. (OAR 345-026-0105) [Amendment #4]

Explanation

This revision removes Condition 9 to conform to the Council's repeal of OAR 345-026-0100 effective May 15, 2007. The revision conforms Condition 10 to the Council's amendment of OAR 345-026-0105 effective May 15, 2007.

Revision 18

Page 7, lines 21-34:

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

~~(a) The certificate holder has construction rights on that part of the site; and~~

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

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

(OAR 345-027-0020(5)) [Amendment #4]

Explanation

This revision conforms Condition 11 to the Council's amendment of OAR 345-027-0020(5) effective May 15, 2007.

Revision 19

Page 7, lines 35-43, and page 8, lines 1-3:

(12) Following receipt of ~~the~~a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and

conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the ~~Office~~Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the ~~Office of Energy~~Department or the Council. (OAR 345-026-0048) [Amendment #4]

Explanation

This revision conforms Condition 12 to the Council's amendment of OAR 345-026-0048 effective May 15, 2007.

Revision 20

Page 8, lines 4-7:

(13) ~~Except as provided in OAR 345-027-0023(6), before beginning construction, the~~The certificate holder shall submit ~~to the Office of Energy~~ a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility. ~~The Office shall append the legal description to the site certificate.~~ (OAR 345-027-0020(2)) [Amendment #4] See Condition (84).

Explanation

This revision conforms Condition 13 to the Council's amendment of OAR 345-027-0020(2) effective May 15, 2007. Although this condition falls within a subsection of conditions that "Must Be Met Before Construction Begins," the revised condition specifies that the legal description is due 90 days after beginning operation. The Department recommends that the condition remain in this subsection to maintain the numbering sequence of conditions. The specific language of the condition controls when the legal description is due.

Revision 21

Page 8, lines 15-24:

(15) Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount ~~or comparable security,~~ satisfactory to the Council~~, in an amount specified in the site certificate. The Council shall specify an amount adequate~~ to restore the site to a useful, non-hazardous condition ~~if the certificate holder either begins but does not complete construction of the facility or permanently closes the facility before establishing the financial mechanism or instrument described in section OAR 345-027-0020(9)~~. The certificate holder shall maintain the bond or ~~comparable security~~letter of credit in effect at all times until the facility has been retired~~certificate holder has established that financial mechanism or instrument~~. The Council may specify different amounts for the bond or

letter of credit during construction and during operation of the facility. (OAR 345-027-0020(8))
See Conditions ~~(43)~~(80) and (109).
[Amendment #4]

Explanation

This revision conforms Condition 15 to the Council's amendment of OAR 345-027-0020(8) effective May 15, 2007. The revision updates the cross-references to other conditions that address the financial assurance requirements for the SWP. Revisions 49 and 66 address the financial assurance conditions.

Revision 22

Page 8, lines 31-41:

(17) The certificate holder shall notify the ~~Office of Energy~~Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the ~~Office~~Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division and to propose mitigation actions. (OAR 345-027-0020(13)) [Amendment #4]

(18) The certificate holder shall notify the ~~Office~~Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. (OAR 345-027-0020(14)) [Amendment #4]

Explanation

This revision conforms Conditions 17 and 18 to Council's amendments of OAR 345-027-0020(13) and (14) effective May 15, 2007.

Revision 23

Page 9, lines 2-8:

(19) ~~Before beginning operation of the facility, the certificate holder shall establish a financial mechanism or instrument, satisfactory to the Council, assuring the availability of adequate funds throughout the life of the facility to retire the facility and restore the site to a useful, non-hazardous condition as described in OAR 345-022-0130.~~ The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to ~~an approved~~a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site. (OAR 345-027-0020(9)) ~~See Condition (80).~~ [Amendment #4]

Explanation

This revision conforms Condition 19 to the Council's amendment of OAR 345-027-0020(9) effective May 15, 2007.

Revision 24

Page 9, lines 9-14:

(20) Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape portions of the site disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall ~~dispose of~~remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility. (OAR 345-027-0020(11)) [Amendment #4]

Explanation

This revision conforms Condition 20 to the Council's amendment of OAR 345-027-0020(11) effective May 15, 2007.

Revision 25

Page 9, lines 15-25:

(21) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor. ~~Before beginning operation of the facility, the certificate holder shall submit to the Office a legal description of the permanent right-of-way where the applicant has built the pipeline or transmission line within an approved corridor. The Office shall append the legal description to the site certificate. The site of the pipeline or transmission line subject to the site certificate is the area within the permanent right-of-way.~~ (OAR 345-027-0023(~~6~~5)) [Amendment #4]

Explanation

This revision conforms Condition 21 to the Council's amendment of OAR 345-027-0023(5) effective May 15, 2007.

Revision 26

Page 9, lines 27-31:

(22) ~~For the related or supporting transmission lines, the certificate holder shall restore the reception of radio and television at residences and commercial establishments in the primary reception area to the level present prior to operations of the transmission line, at no cost to residents experiencing interference resulting from the transmission line. (OAR 345-027-0023(4))~~ [Condition removed by Amendment #4]

Explanation

This revision removes Condition 22 in conformance with the Council's amendment of OAR 345-027-0023 effective May 15, 2007.

Revision 27

Page 9, lines 32-39:

(23) The certificate holder shall notify the ~~Office~~Department of Energy within 72 hours of any occurrence involving the facility if:

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

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

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

(OAR 345-026-0170) [Amendment #4]

Explanation

This revision conforms Condition 23 to the Council's amendment of OAR 345-026-0170 effective May 15, 2007.

Revision 28

Page 10, lines 1-10:

V. SPECIFIC FACILITY CONDITIONS ~~FOR STATELINE 1~~

The conditions listed in this section include conditions based on representations in the site certificate application and supporting record. The Council deems these representations to be binding commitments made by the applicant. These conditions are required under OAR 345-027-0020(10). ~~These conditions apply to Stateline 1.~~ [Amendments #1 and #4]

This section includes other specific facility conditions the Council finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, and to protect the public health and safety.

Citation to the sources of, or basis for, ~~the~~certain conditions are shown in parentheses. ~~Conditions are numbered continuously throughout sections IV and V of this site certificate.~~ [Amendment #4]

Except as specifically noted, these conditions apply to all phases of the Stateline Wind Project. In applying the conditions in this section, "certificate holder" means FPL Vansycle with regard to Stateline 1&2 and FPL Stateline with regard to Stateline 3. [Amendment #4]

Explanation

This revision clarifies that the specific facility conditions listed in Section V apply to all phases of the SWP, except as specifically noted in particular conditions that apply to specific phases of the facility.

Revision 29

Page 10, lines 12-20:

(24) This condition applies to Stateline 1 only. The certificate holder shall begin construction of ~~the facility~~Stateline 1 within one year after the effective date of the site certificate. The certificate holder shall complete construction of ~~the facility~~Stateline 1 on or before two years from the effective date of the site certificate. Under OAR 345-015-0085(9), a site certificate is effective upon execution by the Council Chair and the applicant. Completion

of construction occurs upon the date commercial operation of ~~the facility~~Stateline 1 begins. The Council may grant an extension of the construction beginning or completion deadlines in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment #4]
See condition (3).

Explanation

This revision specifies that Condition 24 applies to Stateline 1 (the first phase of construction of the SWP).

Revision 30

Page 10, lines 21-23:

(25) Within 72 hours of discovery of conditions or circumstances that may violate the terms or conditions of the site certificate, the certificate holder shall report the conditions or circumstances to the ~~Office~~Department of Energy. (OAR 345-027-0020(3)) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 31

Page 10, lines 28-30:

(27) ~~The certificate holder shall restore the site to a useful, nonhazardous condition if the certificate holder either begins but does not complete construction of the facility or permanently closes the facility after construction is complete. (OAR 345-027-0020(3))~~ [Condition removed by Amendment #4]

Explanation

This revision removes Condition 27 because it is redundant. The language of mandatory condition OAR 345-027-0020(9) addresses the certificate holder's obligation to restore the site. Revision 23, above, modifies Condition 19 to include the mandatory language of the rule.

Revision 32

Page 10, lines 31-34:

(28) The certificate holder shall report promptly to the ~~Office~~Department of Energy any change in its corporate relationship with ~~FPL~~NextEra Energy Resources LLC. The certificate holder shall report promptly to the ~~Office of Energy~~Department any change in its access to the resources, expertise and personnel of ~~FPL~~NextEra Energy Resources LLC. (App A-3, D-2, OAR 345-022-0010) [Amendment #4]

Explanation

This revision corrects the agency name and reflects the name change of the applicants' parent corporation.

Revision 33

Page 11, lines 13-15:

(33) The certificate holder shall provide to the ~~Office~~Department of Energy a copy of the contract with the Milton-Freewater Rural Fire Department for fire protection services during construction and operation of the facility before beginning construction. (App U-25) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 34

Page 11, lines 26-44:

(35) The certificate holder shall take steps to protect the facility and property from unauthorized access and to reduce the risk of accidental injury during construction and operations by (App U-25, 26) [Amendment #3]:

(a) Maintaining ~~access gates on private access roads to Stateline 3 facilities in accordance with Umatilla County Development Code § 152.616(HHH)(5)(e), unless Umatilla County has allowed a waiver upon a request by the landowner, and otherwise maintaining~~ fencing and access gates around dangerous equipment or portions of the site as feasible. [Amendments #3 and #4]

(b) Posting warning signs near high-voltage equipment.

(c) Requiring construction contractors to provide specific job-related training to employees, including cardiopulmonary resuscitation, first aid, tower climbing, rescue techniques and safety equipment inspection.

(d) Requiring each worker to be familiar with site safety.

(e) Assigning safety officers to monitor construction activities and methods during each work shift.

(f) Ensuring that workers on each shift are certified in first aid.

(g) Ensuring a well-stocked first-aid supply kit is accessible on-site at all times and that each worker knows its location.

(h) Conducting periodic safety meetings for construction and maintenance staff.

Explanation

This revision removes text from subsection (a) that was added by Amendment #3 and that was applicable to the old Stateline 3 configuration. The Department recommends that the Council address compliance with the County's gate requirement in Condition 123 as discussed in Revision 77.

Revision 35

Page 12, lines 1-4:

(36) The certificate holder shall notify the ~~Office~~Department of Energy and the Umatilla County Planning Department of any accidents including mechanical failures on the site associated with the operation of the wind power facility that may result in public health and safety concerns. (ORS 469.310) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 36

Page 12, lines 5-35:

(37) To reduce the visual impact of the facility, the certificate holder shall:

(a) Design, construct and operate a facility consisting of the major structures and related or supporting facilities described in the Site Certificate.~~:~~

~~(i) Stateline 1: No more than 127 Vestas V47-660-kilowatt (kW) wind turbines (App B-2, Table B-3) [Amendments #1 and #2]~~

~~(ii) Stateline 2: No more than 60 Vestas V47-660-kW wind turbines [Amendments #1 and #2]~~

~~(iii) Stateline 3: No more than 279 Vestas V47-660-kW wind turbines~~ [Amendments #1, #2 and #4]

(b) Group the turbines in strings of 2 to 37 turbines~~, each spaced approximately 250 feet from the next.~~ [Amendments #1, ~~and~~ #2 and #4]

(c) Construct each turbine to be not more than ~~approximately 165~~263 feet tall at the turbine hub and with a total height of not more than ~~approximately 242~~416 feet with the nacelle and blades mounted (App B-5). [Amendment #4]

(d) Mount nacelles on smooth, hollow steel towers~~, approximately 14 feet in diameter at the base (App B-5).~~ [Amendment #4]

(e) Paint all towers ~~west of Butler Grade Road~~ uniformly in a neutral light gray or white color.~~ Paint towers east of Butler Grade Road a neutral white color to blend in with the color of the towers in the Vansycle Project.~~ [Amendments #2 and #4]

(f) Not allow any advertising to be used on any part of the facility or on any signs posted at the facility, except that the turbine manufacturer's logo may appear on turbine nacelles. (App BB-2)

(g) Use only the minimum lighting on its turbine strings required by the Federal Aviation Administration, except:

(i) The Stateline 1&2 satellite operations and maintenance building may have a small amount of low-impact exterior lighting for security purposes (App BB-2);

(ii) Low-impact lighting may be used for occasional nighttime repairs, operations or maintenance at the substation (at other times this lighting would be turned off)~~.~~;

(iii) Security lighting may be used at the Stateline 3 O&M building and substation if it is shielded or downward-directed to reduce glare.

[Amendments #2 and #4]

(h) Use only those signs required for facility safety or required by law and comply with Umatilla County design requirements for signs as described in UCDC Sections 152.545 through 152.548. (App BB-2) [Amendment #4]

(i) Design and construct the operation and maintenance building to be generally consistent with the character of similar buildings used by commercial farmers or ranchers. Upon retirement of the energy facility, the operations and maintenance building must be

removed or converted to farm use, in accordance with Condition ~~98~~19. [Amendments #3 and #4]

Explanation

This revision modifies the requirements of Condition 37 to accommodate the characteristics of the Stateline 3 components and to incorporate compliance with UCDC Sections 152.545 through 152.548, which address design standards for signs. The reference to Condition 98 is replaced with a reference to Condition 19, which provides for a final retirement plan approved by the Council. The Department recommends that Condition 98 be removed, as discussed in Revision 56.

Revision 37

Page 13, lines 1-10:

(41) If the certificate holder elects to use a bond to meet the requirements of Conditions ~~(43),~~ (80)~~, (102)~~ or (109), the certificate holder shall ensure that the surety is obligated to comply with the requirements of applicable statutes, Council rules and this site certificate when the surety exercises any legal or contractual right it may have to assume construction, operation or retirement of the energy facility. The certificate holder shall also assure that the surety is obligated to notify the Council that it is exercising such rights and to obtain any Council approvals required by applicable statutes, Council rules and this site certificate before the surety commences any activity to complete construction, operate or retire the energy facility. [Amendments #1, ~~and~~ #2 and #4]

See Condition (2).

Explanation

This revision deletes the cross-references to Conditions 43 and 102, which would be removed from the Site Certificate as discussed in Revisions 39 and 59. Revision 49 would consolidate the financial assurance requirements for Stateline 1&2 in Condition 80. Revision 66 modifies Condition 109 to address the financial assurance requirements for Stateline 3.

Revision 38

Page 13, lines 12-15:

(42) The certificate holder shall notify the ~~Office~~Department of Energy in advance of any initial road improvement work that does not meet the definition of "construction" in OAR 345-001-0010(10) or ORS 469.300(6) and shall provide to the ~~Office of Energy~~Department plans of the work and evidence that its value is less than $250,000. (App B-21) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 39

Page 13, lines 16-42:

(43) ~~The certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount of $1,459,000 (in 2001 dollars) naming the State of Oregon, acting by and through the Council, as beneficiary or payee.~~

~~(a) The calculation of 2001 dollars shall be made using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"). The amount of the bond or letter of credit account shall increase annually by the percentage increase in the Index and shall be pro-rated within the year to the date of retirement. If at any time the Index is no longer published, the Council shall select a comparable calculation of 2001 dollars. [Amendment #2]~~

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

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

~~(d) The bond or letter of credit shall not be subject to revocation or reduction before the certificate holder's satisfaction of Condition (19).~~

~~(e) The certificate holder may satisfy Sections IV.2(15) and V.2(43) of this site certificate by delivering to the Council a facsimile of the duly issued letter of credit along with a certification from the issuing bank. The bank's certification shall state that the original of the letter of credit has been deposited with a reputable mail carrier for delivery to the Council and shall provide the mail carrier's tracking number for the letter of credit. To maintain the certificate holder's compliance with Sections IV.2(15) and V.2(43) of this site certificate, the original of the letter of credit must be received by the Council within five business days after the facsimile transmission. The parties have agreed to this condition in light of unique circumstances affecting air travel and mail delivery and it is not intended by the Council to have any precedential effect.~~

~~See Conditions (15) and (41).~~ [Condition removed by Amendment #4]

Explanation

This revision removes Condition 43. The purpose of Condition 43 was to specify the financial assurance requirements for Stateline 1 during the period of construction. Condition 80 supersedes Condition 43 upon completion of construction and restoration of areas of temporary disturbance. Because construction of Stateline 1 has been completed, Condition 43 no longer applies.

Revision 40

Page 14, lines 11-15:

(46) The certificate holder shall notify the ~~Office~~Department of Energy of the identity and qualifications of major construction contractors for the facility. The certificate holder shall select major construction contractors based on a proven record of environmental compliance and stewardship, a clean record in terms of other regulatory obligations and other appropriate factors. (App D-3, 4) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 41

Page 14, lines 27-30:

(49) The certificate holder shall design the facility in accordance with seismic design provisions given in the Oregon Building Code. The certificate holder shall identify localized areas of S_C and S_D soil types and assure that any structures to be built in those areas are designed according to the code. ~~(App H 7, 13)~~ The certificate holder shall design all components constructed after 2008 to meet the current Oregon Structural Specialty Code (OSSC 2007) and the 2006 International Building Code. [Amendment #4]

Explanation

This revision incorporates the recommendations of DOGAMI regarding the applicable building codes.

Revision 42

Page 14, lines 31-42, and page 15, lines 1-9:

(50) The certificate holder shall provide the ~~Office~~Department of Energy with design specifications showing the locations of turbines and type of foundations to be employed and demonstrating that the following conditions have been satisfied (OAR 345-022-0020):

(a) If a turbine is located within 50 feet of a slope steeper than 30°, the stability of the slope has been reviewed by the foundation designer to confirm that either (i) the slope has a safety factor of at least 1.1 during the maximum probable seismic event or (ii) the safety factor is less than 1.1, but ground displacements will not adversely affect the stability of the wind turbine. Slopes shall be evaluated in the field for each proposed turbine location.

(b) The foundation designer's review of slope displacement during a seismic event has been made using a pseudo-static horizontal coefficient of 0.13g and, if the safety factor is less than 1.1, the foundation designer has shown that (i) the movement will not intersect the turbine, (ii) the movement will intersect the turbine but will not affect its stability, or (iii) additional stabilization measures, such as anchor tie-downs or ground support systems, will be employed to maintain stability.

(c) If a turbine is located where power generating or other requirements preclude sufficient setback distances to avoid intersection of a moving slope with the turbine foundation, the foundation designer has demonstrated that the turbine foundation will withstand loads from the moving soil or has been equipped with ground support systems that will withstand loads from moving soil.

(d) The foundation designer has confirmed that the turbines and conduit can tolerate some movement without instability or breakage if a mapped fault were to rupture.

[Amendment #4]

Explanation

This revision corrects the agency name.

Revision 43

Page 15, lines 14-21:

(52) The certificate holder shall design the facility to avoid or minimize adverse impacts to wildlife by measures including but not limited to the following (App P-41):

(a) Siting the turbines on ridges outside of migration flyways.

(b) Siting turbines to avoid placing turbines in saddle locations along ridges (where bird use is typically higher).

(c) Avoiding the use of overhead collector lines.~~, except in Stateline 3 areas where limitations in carrying capacity of underground lines make the use of overhead collector lines unavoidable~~ [Amendments #2 and #4]

Explanation

This revision modifies subparagraph (c). There are no "overhead collector lines" proposed for the new Stateline 3 configuration.

Revision 44

Page 15, lines 22-44, and page 16, lines 1-4:

(53) This condition does not apply to Stateline 2. The certificate holder shall survey the status of known Swainson's hawk nests within the vicinity of proposed construction before the projected date for construction to begin. If active nests are found, and construction is scheduled to begin before the end of the sensitive nesting and breeding season (June 1 to August 31), the certificate holder shall develop a no-construction buffer in consultation with ODFW and shall not engage in construction activities within the buffer until the sensitive season has ended. If construction continues into the sensitive nesting and breeding season for the following year, the certificate holder shall not engage in construction activities within the buffer around active nests until the sensitive season has ended. [Amendments #2 and #4]

(54) This condition does not apply to Stateline 2. The certificate holder shall conduct appropriate pre-construction nest surveys for burrowing owls if construction is scheduled to occur during the sensitive period (March 15 to August 30). The certificate holder shall leave a no-construction buffer, developed in consultation with ODFW, around any active nests during the sensitive period. [Amendments #2 and #4]

(55) This condition does not apply to Stateline 2. The certificate holder shall conduct pre-construction surveys for state-listed threatened, endangered or candidate plant species in all areas not included in earlier botanical surveys of the analysis area. If any listed plants are found, ~~FPL~~the certificate holder will notify the ~~Office~~Department of Energy and consult with the Oregon Department of Agriculture regarding appropriate measures to protect the species and mitigate for impacts from construction, operation and retirement of the facility. (App Q-7) [Amendment #4]

(56) This condition does not apply to Stateline 2. The certificate holder shall conduct appropriate pre-construction surveys for the presence of Washington ground squirrels in construction zones that have suitable habitat. Construction zones include the areas of permanent and temporary disturbance and a 175-foot surrounding buffer in which there may be incidental construction impacts. If squirrel activity is found, the certificate holder shall notify the ~~Office~~Department of Energy and develop an appropriate no-construction

buffer and other appropriate mitigation measures in consultation with the ~~Office~~Department and ODFW. In addition, the certificate holder shall map and stake sensitive areas to be avoided during construction as required by Condition (63). [Amendments #2 and #4]

Explanation

This revision specifies that Conditions 53 through 56 do not apply to Stateline 2. The revision corrects the agency name.

Revision 45

Page 18, lines 1-45:

(65) The certificate holder shall mitigate possible impacts to fish and wildlife habitat by measures including but not limited to the following (App P-42 through 45, Q-10, 11):

(a) Avoiding vegetation removal wherever possible.

(b) Limiting construction activities to within public road right-of-ways where possible.

(c) Using best management practices to prevent erosion of soil into stream channels.

(d) Controlling invasive, weedy plant species during maintenance of project facilities.

(e) Restoring temporarily disturbed sites to pre-construction condition or better with native seed mixes as described for temporarily disturbed ~~habitats~~areas in the *Revegetation Plan* included in the ~~final order~~Final Order on Amendment #4 as Attachment B and as revised from time to time. [Amendments #1 and #4]

(f) Developing re-vegetation plant mixes and habitat enhancement locations in consultation with ODFW and the Umatilla County weed control board.

(g) Monitoring re-vegetated areas to ensure successful establishment of new vegetation.

(h) Monitoring turbine strings, roads and other disturbed areas regularly to prevent the spread of noxious weeds.

(i) Developing measures to reduce the potential spread of noxious weeds in consultation with the weed control board of Umatilla County.

(66) This condition applies to Stateline 1 only. To mitigate for the permanent elimination of one-half acre of Category 2 habitat, the certificate holder shall control weeds and enhance habitat of one acre of weed-infested upland habitat with native plants. The certificate holder shall carry out enhancement activities as described for habitat ~~improvement~~enhancement areas in the *Revegetation Plan* referenced in Condition 65 ~~included in the final order as Attachment B and as revised from time to time~~. The certificate holder shall acquire the legal right to create and maintain the enhancement area for the life of the facility by means of an outright purchase, conservation easement or similar conveyance and shall provide a copy of the documentation to the ~~Office~~Department of Energy. The certificate holder shall determine the location of this habitat enhancement area in consultation with ODFW and landowners. (App P-44) [Amendments #1 and #4]

(67) This condition does not apply to Stateline 3. To mitigate for the permanent elimination of approximately 48 acres of Category 3 habitat, the certificate holder shall control weeds and enhance habitat on an equal area of weed-infested land in the project vicinity. The certificate holder shall carry out enhancement activities as described for habitat

~~improvement~~enhancement areas in the *Revegetation Plan* referenced in Condition 65 ~~included in the final order as Attachment B and as revised from time to time~~. The certificate holder shall acquire the legal right to create and maintain the enhancement area for the life of the facility by means of an outright purchase, conservation easement or similar conveyance and shall provide a copy of the documentation to the ~~Office~~Department of Energy. The certificate holder shall determine the location of this habitat enhancement area in consultation with ODFW and landowners. (App P-44) [Amendments #1 and #4]

(68) To minimize impacts to temporarily disturbed Category 6 habitat areas, the certificate holder shall use measures including but not limited to the following (App P-45):

(a) Replacing agricultural topsoil to its pre-construction condition.

(b) Using best management practices to prevent loss of topsoil during construction.

(c) Reseeding native habitats with a native seed mix that includes at least some seed collected from the area as described for temporarily disturbed habitats in the *Revegetation Plan* referenced in Condition 65 ~~included in the final order as Attachment B and as revised from time to time~~. [Amendments #1 and #4]

(d) Controlling noxious weeds in areas disturbed by construction activities.

Explanation

The revisions to Conditions 65 through 68 specify the cross-reference to the *Revegetation Plan* as incorporated in the Final Order on Amendment #4. The revisions include minor word changes to conform to the language used in the Revegetation Plan. The revisions specify the applicability of Conditions 66 and 67. The revisions correct the agency name. The Department's recommended changes to the *Revegetation Plan* are shown in Attachment B to the Proposed Order and are incorporated herein by this reference.

Revision 46

Page 19, lines 1-7:

(69) The certificate holder shall not place any part of the facility within any Washington ground squirrel (WGS) colony or on potential Washington ground squirrel burrows~~, except as allowed for Stateline 3 facilities under the *Resource Impact Avoidance and Mitigation Plan*, included in the final order as Attachment C and as revised from time to time. The certificate holder shall limit permanent road widening and other improvements and shall locate temporary roads and laydown areas to minimize impacts to potential Washington ground squirrel habitat~~. The certificate holder shall have an on-site wildlife monitor who will flag habitat required for WGS survival (Category 1), conduct pre-construction surveys to determine the distribution of WGS in the area and ensure that construction personnel do not enter the area. The monitor shall conduct post construction monitoring to document distribution of the WGS in the area. [Amendments #2 and #4]

Explanation

This revision removes the reference to the *Resource Impact Avoidance and Mitigation Plan*. The plan was adopted in the Final Order on Amendment #2 to mitigate for the impacts of the old Stateline 3 configuration on Category 1 habitat that is essential to Washington ground squirrels. The new Stateline 3 configuration has no direct impact on Category 1 habitat. The modified Condition 69 would require avoidance of impacts on WGS habitat. The

revision requires an on-site wildlife monitor to flag the habitat required for WGS survival as a no-entry area during construction. The wildlife monitor would survey the area for WGS activity before and after construction.

Revision 47

Page 19, line 40, through page 20, line 9:

(75) The certificate holder shall post high-visibility no-entry barriers ~~by staking or flagging to~~around recorded cultural and archaeological sites and shall ensure that construction workers stay away from the vicinity of the ~~cultural~~ sites. The certificate holder shall locate barriers to create a buffer with a minimum width of ~~50 feet~~30 meters between the ~~cultural~~ sites and construction activities. The certificate holder shall have a qualified cultural resource expert~~, chosen by the Confederated Tribes of the Umatilla Indian Reservation,~~ present during construction ~~in the immediate vicinity of the sites to ensure that~~to monitor the avoidance of the no-entry areas by construction workers and to monitor ground disturbing activities.~~ construction crews respect the buffers. (App S-4)~~ The certificate holder shall select a cultural resource expert chosen by the Confederated Tribes of the Umatilla Indian Reservation, if available, or shall select a qualified cultural resource expert, subject to Department approval, to conduct the monitoring. [Amendment #4]

(76) If previously unidentified cultural resources are encountered during construction, the certificate holder shall halt earth-disturbing activities in the immediate vicinity of the find, in accordance with Oregon state law (ORS 97.745 and 358.920), and shall notify the ~~Office~~Department of Energy, the Oregon State Historic Preservation Officer (SHPO) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The certificate holder shall have a qualified archaeologist evaluate the discovery and recommend subsequent courses of action in consultation with the CTUIR and the SHPO. If human remains are discovered, the certificate holder shall halt all construction activities in the immediate area and shall notify the Department, SHPO, CTUIR, the County Medical Examiner and the State Police.~~ (App S-5, 6)~~ [Amendment #4]

Explanation

This revision modifies Conditions 75 and 76 to incorporate the recommendations of the CTUIR Cultural Resources Protection Program.

Revision 48

Page 20, lines 16-20:

(79) This condition does not apply to Stateline 3. The certificate holder shall construct the cable crossing of Vansycle Canyon at a time when the stream is dry. The certificate holder shall remove no more than approximately 7.5 cubic yards of material from the streambed crossing and shall replace a like amount of fill material after the cable has been laid, restoring the area similar to the original contours of the streambed. (Linehan, July 23 letter, 3) [Amendment #4]

Explanation

This revision specifies that Condition 79 does not apply to Stateline 3.

Revision 49

Page 20, lines 22-34:

Alternative A

(80) This condition applies to Stateline 1&2 only. Within 90 days after the effective date of the Fourth Amended Site Certificate, the~~The~~ certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount of ~~$1,161,120 (in 2001 dollars)~~$3.962 million (1st Quarter 2009 dollars), to be adjusted to the date of issuance as described in (a), naming the State of Oregon, acting by and through the Council, as beneficiary or payee ~~(the "retirement fund")~~.

(a) Subject to approval by the Department, the certificate holder shall adjust the amount of the bond or letter of credit on an annual basis using the following calculation:

(i) Adjust the Subtotal (1st Quarter 2009 dollars) shown in Table 1 of the Final Order on Amendment #4 to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"), and using the index value for 1st Quarter 2009 dollars and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the Index is no longer published, the Council shall select a comparable calculation to adjust 1st Quarter 2009 dollars to present value.~~The calculation of 2001 dollars shall be made using the Index described in Condition (43).~~

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

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

(iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) to determine the adjusted Full Cost.

(v) Calculate the adjusted scrap value per ton using an index factor derived from the Producer Price Index values, not seasonally adjusted, reported by the U.S. Department of Labor, Bureau of Labor Statistics, "Commodities: Metals and metal Products: Carbon steel scrap" (Series ID: WPU101211). Using the annual index value for the most recent full year for which final published data are available as the numerator and the annual index value for 2006 as the denominator, multiply the estimated scrap value of $145 per ton (2006 dollars) by the resulting factor. If at any time the Producer Price Index is no longer published, the Council shall select a comparable calculation to adjust the estimated scrap value per ton.

(vi) Multiply the adjusted scrap value per ton (v) by 13,206 tons to determine the adjusted scrap value allowance.

(vii) Adjust the total "Turbines and Towers" costs shown in Table 1 of the Final Order on Amendment #4 to present value, using the Index as determined in (i).

(viii) Subtract the adjusted scrap value allowance (vi) or the adjusted "Turbines and Towers" costs (vii), whichever is less, from the adjusted Full Cost (iv), and round the resulting total to the nearest $1,000 to determine the adjusted financial assurance amount for the reporting year.

(b) The certificate holder shall use a form of ~~retirement fund~~bond or letter of credit approved by the Council.

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

(d) The ~~retirement fund~~bond or letter of credit shall not be subject to revocation or reduction before retirement of the energy facility.

(e) The certificate holder shall describe the status of the ~~retirement fund~~bond or letter of credit in the annual report submitted to the Council under Condition (8).

See Conditions (19) and (41).

[Amendment #4]

Alternative B

(80) This condition applies to Stateline 1&2 only. Within 90 days after the effective date of the Fourth Amended Site Certificate, the~~The~~ certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount of ~~$1,161,120 (in 2001 dollars)~~$6.160 million (1st Quarter 2009 dollars), to be adjusted to the date of issuance as described in (a), naming the State of Oregon, acting by and through the Council, as beneficiary or payee ~~(the "retirement fund")~~.

(a) Subject to approval by the Department, the certificate holder shall adjust the amount of the bond or letter of credit on an annual basis using the following calculation:

(i) Adjust the Subtotal (1st Quarter 2009 dollars) shown in Table 1 of the Final Order on Amendment #4 to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"), and using the index value for 1st Quarter 2009 dollars and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the Index is no longer published, the Council shall select a comparable calculation to adjust 1st Quarter 2009 dollars to present value.~~The calculation of 2001 dollars shall be made using the Index described in Condition (43).~~

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

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

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

(b) The certificate holder shall use a form of ~~retirement fund~~bond or letter of credit approved by the Council.

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

(d) The ~~retirement fund~~bond or letter of credit shall not be subject to revocation or reduction before retirement of the energy facility.

(e) The certificate holder shall describe the status of the ~~retirement fund~~bond or letter of credit in the annual report submitted to the Council under Condition (8).

See Conditions (19) and (41).

[Amendment #4]

Explanation

This revision specifies that Condition 80 applies to Stateline 1&2. The revision consolidates the estimated site restoration costs for Stateline 1&2, adjusted to 1st Quarter 2009 dollars. The language in subparagraph (a), which describes the method of annual adjustment, clarifies the calculation and conforms to the actual practice used in financial assurance adjustments for Stateline 1&2.

The Department recommended that the Council adopt Alternative A, which includes a limited offset for scrap value.

Revision 50

Page 21, lines 1-19:

(84) ~~For the purposes of this site certificate, the term "legal description" means a description of location by reference to a map and geographic information system (GIS) data that clearly and specifically identifies the physical location of all parts of the facility, including but not limited to turbine towers, meteorological towers, roads and underground collection cables. Notwithstanding OAR 345-027-0020(2), for~~For the purposes of this site certificate, wind turbine tower locations are analogous to location of permanent rights-of-way for pipelines or transmission lines as described in OAR 345-027-0023(~~6~~5). The Council approves the corridor described in the final order for construction of turbine strings. As required under OAR 345-027-0020(2) and Condition 13, ~~before beginning operation of the facility,~~ the certificate holder shall submit to the ~~Office~~Department of Energy a legal description of the location where the certificate holder has built turbine towers and other parts of the facility. ~~Before~~Within 90 days after beginning operation of any turbines that are added to the facility by amendment of the site certificate, the certificate holder shall submit to the ~~Office of Energy~~Department a legal description of the location of any additional turbine towers and related or supporting facilities allowed by the amendment. The site of the facility is the area identified by the legal descriptions required by this condition. ~~By means of the legal descriptions~~Within 90 days after beginning facility operation, the certificate holder shall provide to the ~~Office of Energy~~Department and the Umatilla County Planning Department the actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, ~~and all~~ connecting lines and transmission lines and a summary of as built changes in the facility from the original plan. (OAR 345-027-0020(2) and (3)) [Amendments #1 and #4]

See Condition (13).

Explanation

This revision conforms Condition 84 to OAR 345-027-0020(2) as amended by the Council effective May 15, 2007. The revision adds language requested by Umatilla County consistent with the requirements of UCDC Section 152.616(HHH)(9) and (10).

Revision 51

Page 21, lines 28-32:

(87) This condition applies to Stateline 1&2 only. The certificate holder shall provide portable toilets for use at the satellite O&M building and shall make sure that they are pumped and cleaned regularly by a licensed pumper who is qualified to pump and clean portable toilet facilities. The certificate holder must contact the Oregon Department of Environmental Quality if the on-site septic system is to be used. (App O-2) [Amendment #4]

Explanation

This revision specifies that Condition 87 applies to Stateline 1&2.

Revision 52

Page 22, lines 25-29:

(93) The certificate holder shall conduct wildlife monitoring as described in the ~~Oregon~~ Wildlife Monitoring and Mitigation Plan, included in the ~~final order~~Final Order on Amendment #4 as Attachment A and as revised from time to time. Subject to approval by the ~~Office~~Department of Energy as to professional qualifications, the certificate holder shall hire qualified wildlife consultants to carry out the monitoring. (OAR 345-022-0060) [Amendments #1 and #4]

Explanation

This revision modifies Condition 93 to specify the cross-reference to the *Wildlife Monitoring and Mitigation Plan* (WMMP) as incorporated in the Final Order on Amendment #4. The revision corrects the agency name. The Department's recommended revisions of the WMMP are shown in Attachment A to the Proposed Order and are incorporated herein by this reference.

Revision 53

Page 22, lines 30-33:

(94) If analysis of monitoring data indicates impacts to wildlife or wildlife habitat that the certificate holder has not adequately addressed by mitigation and if these impacts result in a loss of habitat quantity or quality, the certificate holder shall mitigate for the loss of habitat quality by measures approved by the Oregon ~~Office~~Department of Energy. (OAR 345-022-0060) [Amendment #4]

Explanation

This revision corrects the agency name.

Revision 54

Page 23, lines 4-13:

VI. ~~SPECIFIC FACILITY~~ CONDITIONS ~~FOR STATELINE 2 [This section added by Amendment #1]~~ADDED BY AMENDMENT #1 [Amendments #1 and #4]

The conditions listed in this section include conditions based on representations in the request for Amendment #1 and supporting record. The Council deems these representations to be binding commitments made by the applicant. These conditions are required under OAR 345-027-0020(10). ~~These conditions apply to Stateline 2. Conditions (98), (99), (100) and (103) also apply to Stateline 1.~~ [Amendment #4]

~~In addition to the conditions listed in this section, all conditions in sections IV and V also apply to Stateline 2, except Conditions (11), (15), (19), (24), (27), (39), (42), (43), (53), (54), (55), (56), (66) and (80).~~ Except as specifically noted, these conditions apply to all phases of the Stateline Wind Project. In applying the conditions in this section, "certificate holder" means FPL Vansycle with regard to Stateline 1&2 and FPL Stateline with regard to Stateline 3. [Amendment #4]

Explanation

This revision clarifies that the conditions listed in Section VI apply to all phases of the SWP, except as specifically noted in particular conditions that apply to specific phases of the facility.

Revision 55

Page 23, lines 15-22:

(97) This condition applies to Stateline 2 only. The certificate holder shall begin construction of Stateline 2 within six months after the effective date of the First Amended Site Certificate. The certificate holder shall complete construction of Stateline 2 before March 1, 2005. Under OAR 345-027-0070, an amended site certificate is effective upon execution by the Council Chair and the applicant. Completion of construction occurs upon the date commercial operation of ~~the facility~~Stateline 2 begins. The Council may grant an extension of the construction beginning or completion deadlines in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendments #2 and #4]

Explanation

This revision specifies that Condition 97 applies to Stateline 2.

Revision 56

Page 23, lines 23-28:

(98) ~~The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.~~ [Condition removed by Amendment #4]

Explanation

This revision removes Condition 98 because it is redundant. The language of mandatory condition OAR 345-027-0020(9), as amended by the Council effective May 15, 2007, addresses the certificate holder's obligation to restore the site. The mandatory language is incorporated in Condition 19 as shown in Revision 23, above.

Revision 57

Page 23, lines 29-42, and page 24, lines 1-6:

(99) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the ~~Office of Energy~~Department of the proposed new

owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate. (OAR 345-027-0020(15) [Amendment #4]

(100) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the ~~Office~~Department of Energy within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the ~~Office~~Department to prepare a proposed ~~a~~ final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in ~~section~~ OAR 345-027-0020(8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan. (OAR 345-027-0020(16) [Amendment #4]

Explanation

Conditions 99 and 100 incorporate the mandatory conditions set forth in OAR 345-027-0020(15) and (16). The revision corrects the agency name.

Revision 58

Page 24, lines 8-22:

(101) This condition applies to Stateline 2 only. The certificate holder shall not engage in construction activities for Stateline 2 facilities, including the movement of heavy trucks and equipment, within a ¼-mile buffer around an identified ferruginous hawk nest tree during the sensitive period of the nesting season (March 20 to August 15), except as provided in this condition. The certificate holder shall use a protocol approved by the Oregon Department of Fish and Wildlife (ODFW) to determine whether the nest is occupied. The certificate holder may begin construction activities before August 15 if the nest is not occupied. If the nest is occupied, the certificate holder shall use a protocol approved by ODFW to determine when the young are fledged (independent of the core nest site). With the approval of ODFW, the certificate holder may begin construction before August 15 if the young are fledged. During the specified nesting season, the certificate holder may use the road into the site with vehicles that are one ton in capacity or smaller; conduct turbine, turbine tower, blade or met tower construction activities that are not visible above the horizon from the vantage point of the ferruginous hawk nest; and use the road one time to transport heavy equipment off the site. [Amendments #2 and #4]

Explanation

This revision specifies that Condition 101 applies to Stateline 2 only.

Revision 59

Page 24, lines 23-45, and page 25, lines 1-2:

~~(102) In addition to the requirements of Condition (80), the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount of $899,200 (in 2002 dollars) naming the State of Oregon, acting by and through the Council, as beneficiary or payee. In lieu of submitting a separate bond or letter of credit in the amount required under this condition, the certificate holder may submit a bond or letter of credit that includes the amount required under this condition and the amount required under Condition (80).~~

~~(a) The calculation of 2002 dollars shall be made using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index"). The amount of the bond or letter of credit account shall increase annually by the percentage increase in the Index and shall be pro-rated within the year to the date of retirement. If at any time the Index is no longer published, the Council shall select a comparable calculation of 2002 dollars. [Amendment #2]~~

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

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

~~(d) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council, as required by Condition (8).~~

~~(e) After restoration of the temporary laydown and staging areas, as required by Conditions (20) and (68), the certificate holder may reduce the amount of the bond or letter of credit required under this condition to $559,920 (in 2002 dollars).~~

~~(f) The bond or letter of credit shall not be subject to revocation or reduction, except as allowed by paragraph (e), before retirement of the Stateline 2 site.~~

[Condition removed by Amendment #4]

Explanation

This revision removes Condition 102. The financial assurance requirements for Stateline 1&2 would be consolidated in Condition 80 as described in Revision 49.

Revision 60

Page 25, lines 10-12:

(104) This condition applies to Stateline 2 only. To mitigate for the permanent elimination of approximately 1 acre of Category 3 and 4 habitat, the certificate holder shall enlarge the habitat enhancement area described in Condition (67) by 1 acre ~~(making a total area of 49 acres)~~. [Amendment #4]

Explanation

This revision specifies that Condition 104 applies to Stateline 2. The language in parentheses is removed because it is potentially confusing. The habitat enhancement area for Stateline 1&2 consists of 48 acres required by Condition 67, 1 acre required by Condition 66

and 1 acre required by Condition 104, for a total enhancement area of 50 acres for direct impacts to Category 2, 3 and 4 habitats.

Revision 61

Page 25, lines 14-32:

(105) This condition applies to Stateline 2 only. The certificate holder shall enter into an agreement with the landowner of a property identified as 84301 Stockman Road, Helix, Oregon, requiring that the structure remain uninhabited during construction. The certificate holder shall continue the no-occupation agreement until retirement of the facility unless the certificate holder demonstrates to the satisfaction of the Department that the facility complies with the applicable noise control regulations under OAR 340-035-0035. The certificate holder may demonstrate compliance with the regulations as to the increase in ambient statistical noise levels by entering into a legally effective easement or real covenant with the owner of the property identified as 84301 Stockman Road, Helix, Oregon, pursuant to which the owner authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate measurement point. A legally effective easement or real covenant shall: include a legal description of the burdened property (the noise sensitive property); be recorded in the real property records of the county; expressly benefit the certificate holder; expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and not be subject to revocation without the certificate holder's written approval. If such easement or real covenant is not in effect, then the certificate holder shall demonstrate to the satisfaction of the Department, based on modeling or measurements performed in compliance with OAR 340-035-0035, that an easement or real covenant is not necessary to comply with those regulations. [Amendments #3 and #4].

Explanation

This revision specifies that Condition 105 applies to Stateline 2.

Revision 62

Page 25, lines 33-41:

VII. ~~SPECIFIC FACILITY~~ CONDITIONS ~~FOR STATELINE 3 [This section added by Amendment #2]~~ADDED BY AMENDMENT #2 [Amendments #2 and #4]

The conditions listed in this section include conditions based on representations in the request for Amendment #2 and supporting record. The Council deems these representations to be binding commitments made by the applicant. These conditions are required under OAR 345-027-0020(10). These conditions apply to Stateline 3 only. In applying the conditions in this section, "certificate holder" means FPL Stateline. [Amendment #4]

~~In addition to the conditions listed in this section, all conditions in sections IV, V and VI also apply to Stateline 3, except Conditions (11), (15), (19), (24), (42), (43), (66), (67), (79), (80), (97), (101), (102), (104) and (105).~~

Explanation

This revision specifies that the conditions listed in Section VII apply to Stateline 3 and to FPL Stateline as the certificate holder. The recommended modifications in Sections IV, V and VI specify the applicability of the conditions listed in those sections to particular phases of construction of the SWP.

Revision 63

Page 26, lines 2-8:

(106) The certificate holder shall begin construction of Stateline 3 by ~~June 23, 2007~~October 1, 2009. The certificate holder shall complete construction of Stateline 3 before December 31, ~~2007~~2010. Under OAR 345-027-0070, an amended site certificate is effective upon execution by the Council Chair and the applicant. Completion of construction occurs upon the date commercial operation of ~~the facility~~Stateline 3 begins. The Council may grant an extension of the construction beginning or completion deadlines in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendments #3 and #4]

Explanation

This revision sets deadlines for the beginning and completion of construction of Stateline 3. In the amendment request, the applicants proposed to begin construction of Stateline 3 in March 2009 and to complete construction by December 31, 2009. In recommending construction deadlines, the Department assumed that the earliest possible date for the Council's final action on Amendment #4 would be March 27, 2009. To provide a deadline that would not unreasonably constrain the applicants if unforeseen delays occur, the Department proposed a deadline of October 1, 2009, to begin construction and a deadline of December 31, 2010, to complete construction.

Revision 64

Page 26, lines 9-11:

(107) ~~To reduce and mitigate the impacts to Category 1 habitat, the certificate holder shall implement the measures described in the Resource Impact Avoidance and Mitigation Plan, included in the final order as Attachment C and as revised from time to time.~~ [Condition removed by Amendment #4]

Explanation

The revision removes Condition 107 because the new Stateline 3 configuration would have no impacts on Category 1 habitat under Condition 131, described in Revision 85 below.

Revision 65

Page 26, lines 12-19:

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

(a) Designing and operating the transmission lines so that maximum current (amps per conductor) would not exceed the following levels: For 34.5-kV underground lines, ~~343~~560 amps~~; for 34.5-kV aboveground lines, 1,200 amps; for 115-kV transmission lines, 1,064 amps;~~ and for 230-kV transmission lines, ~~535~~753 amps. [Amendment #4]

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

Explanation

This revision modifies Condition 108 as requested by the applicants.

Revision 66

Page 26, lines 21-43, and page 27, lines 1-7:

Alternative A

(109) ~~In addition to the requirements of Conditions (80) and (102)~~Before beginning construction of Stateline 3, the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount ~~of **$3,322,900** (in 2002 dollars)~~described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either $3.976 million (in 1st Quarter 2009 dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b). ~~However, the Council authorizes the Office of Energy staff to adjust the amount if the certificate holder constructs fewer than 279 turbines. For calculating any such adjustments, the Office shall use the methodology and cost estimates approved in the Final Order on Amendment #2. In lieu of submitting a separate bond or letter of credit in the amount required under this condition, the certificate holder may submit a bond or letter of credit that includes the amount required under this condition and the amount required under Conditions (80) and (102).~~

(a) The certificate holder may adjust the amount of the bond or letter of credit based on the final design configuration of Stateline 3 by applying the unit costs and general costs illustrated in Table 3 in the Final Order on Amendment #4 and calculating the financial assurance amount as described in that order, adjusted to the date of issuance as described in (b) and subject to approval by the Department.

(~~a~~b) Subject to approval by the Department, the certificate holder shall adjust the amount of the bond or letter of credit on an annual basis using the following calculation:

(i) Adjust the Subtotal component of the initial bond or letter of credit amount (expressed in 1st Quarter 2009 dollars) to present value, ~~The calculation of 2002 dollars shall be made~~ using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index") and using the index value for 1st Quarter 2009 dollars and the quarterly index value for the date of issuance of the new bond or letter of credit.~~The amount of the bond or letter of credit account shall increase annually by the percentage increase in the Index and shall be pro-rated within the year to the date of retirement.~~ If at any time the Index is no longer published, the Council shall select a comparable calculation ~~of~~to adjust 1st Quarter 200~~2~~9 dollars to present value.

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

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

(iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) to determine the adjusted Full Cost.

(v) Calculate the adjusted scrap value per ton using an index factor derived from the Producer Price Index values, not seasonally adjusted, reported by the U.S. Department of

Labor, Bureau of Labor Statistics, "Commodities: Metals and metal Products: Carbon steel scrap" (Series ID: WPU101211). Using the annual index value for the most recent full year for which final published data are available as the numerator and the annual index value for 2006 as the denominator, multiply the estimated scrap value of $145 per ton (2006 dollars) by the resulting factor. If at any time the Producer Price Index is no longer published, the Council shall select a comparable calculation to adjust the estimated scrap value per ton.

(vi) Multiply the adjusted scrap value per ton (v) by the total net tons in the turbines and turbine towers (as-built) to determine the adjusted scrap value allowance.

(vii) Adjust the total "Turbines and Towers" costs shown in Table 3 of the Final Order on Amendment #4 to present value, using the Index as determined in (i).

(viii) Subtract the adjusted scrap value allowance (vi) or the adjusted turbine dismantling and transportation cost (vii), whichever is less, from the adjusted Full Cost (iv), and round the resulting total to the nearest $1,000 to determine the adjusted financial assurance amount for the reporting year.

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

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

(~~d~~e) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council, as required by Condition (8).

~~(e) After restoration of the temporary laydown and staging areas, as required by Conditions (20) and (68), the certificate holder shall increase the amount of the bond or letter of credit required under this condition to **$3,392,900** (in 2002 dollars), or to a lesser proportionate amount as determined by the Office of Energy staff in the event less than 279 turbines are built as discussed above.~~

(f) ~~After construction is complete, the~~The bond or letter of credit shall not be subject to revocation or reduction before retirement of the Stateline 3 site.

[Amendment #4]

Alternative B

(109) ~~In addition to the requirements of Conditions (80) and (102)~~Before beginning construction of Stateline 3, the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount ~~of **$3,322,900** (in 2002 dollars)~~described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either $5.911 million (in 1st Quarter 2009 dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b). ~~However, the Council authorizes the Office of Energy staff to adjust the amount if the certificate holder constructs fewer than 279 turbines. For calculating any such adjustments, the Office shall use the methodology and cost estimates approved in the Final Order on Amendment #2. In lieu of submitting a separate bond or letter of credit in the amount required under this condition, the certificate holder may submit a bond or letter of credit that includes the amount required under this condition and the amount required under Conditions (80) and (102).~~

(a) The certificate holder may adjust the amount of the bond or letter of credit based on the final design configuration of Stateline 3 by applying the unit costs and general costs illustrated in Table 3 in the Final Order on Amendment #4 and calculating the financial assurance amount as described in that order, adjusted to the date of issuance as described in (b) and subject to approval by the Department.

(~~a~~b) Subject to approval by the Department, the certificate holder shall adjust the amount of the bond or letter of credit on an annual basis using the following calculation:

(i) Adjust the Subtotal component of the initial bond or letter of credit amount (expressed in 1st Quarter 2009 dollars) to present value, ~~The calculation of 2002 dollars shall be made~~ using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency (the "Index") and using the index value for 1st Quarter 2009 dollars and the quarterly index value for the date of issuance of the new bond or letter of credit.~~The amount of the bond or letter of credit account shall increase annually by the percentage increase in the Index and shall be pro-rated within the year to the date of retirement.~~ If at any time the Index is no longer published, the Council shall select a comparable calculation ~~of~~to adjust 1st Quarter 200~~2~~9 dollars to present value.

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

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

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

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

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

(~~d~~e) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council, as required by Condition (8).

~~(e) After restoration of the temporary laydown and staging areas, as required by Conditions (20) and (68), the certificate holder shall increase the amount of the bond or letter of credit required under this condition to **$3,392,900** (in 2002 dollars), or to a lesser proportionate amount as determined by the Office of Energy staff in the event less than 279 turbines are built as discussed above.~~

(f) ~~After construction is complete, the~~The bond or letter of credit shall not be subject to revocation or reduction before retirement of the Stateline 3 site.

[Amendment #4]

Explanation

This revision modifies Condition 109 based on the estimated site restoration costs as shown in Table 3 of the Final Order on Amendment #4. New subparagraph (a) allows the certificate holder to adjust the financial assurance amount based on the final design

configuration of Stateline 3, subject to Department approval. The revised subparagraph (b) provides the method of adjusting the financial assurance amount to present dollars and is consistent with the methods used in recent site certificates for other wind energy facilities approved by the Council.

The Department recommended that the Council adopt Alternative A, which includes a limited offset for scrap value.

Revision 67

Page 27, lines 12-14:

(111) ~~The certificate holder shall perform field surveys for rare plant species during the appropriate season in 2003 in those Stateline 3 areas that were not previously surveyed. The certificate holder shall report the results of these surveys to the Office of Energy.~~[Condition removed by Amendment #4]

Explanation

This revision removes Condition 111 because it is not applicable to the new Stateline 3 configuration. The applicants have performed all necessary pre-construction rare plant surveys for Stateline 3.

Revision 68

Page 27, lines 16-24:

(112) ~~To mitigate for the Stateline 3 impacts to Category 2, 3, 4, 5 and 5 habitat, the certificate holder shall control weeds and enhance habitat on 35 acres of weed-infested land in the project vicinity.~~Before beginning construction and after considering all micrositing factors, the certificate holder shall provide to the Department and to the Oregon Department of Fish and Wildlife (ODFW) detailed maps of the facility site, showing the final design locations where the certificate holder proposes to build facility components and the habitat categories of all areas that would be affected during construction. In addition, the certificate holder shall provide a table showing the acres of temporary and permanent habitat impact by habitat category and subtype, similar to Table 8 in the Final Order on Amendment #4. In classifying the affected habitat into habitat categories, the certificate holder shall consult with the ODFW. The certificate holder shall not begin ground disturbance in an affected area until the habitat assessment has been approved by the Department. The Department may employ a qualified contractor to confirm the habitat assessment by on-site inspection. Based on the approved habitat assessment, the~~The~~ certificate holder shall calculate the mitigation area requirement and shall carry out enhancement activities as described ~~for habitat improvement areas~~ in the ~~Revegetation Plan~~*Stateline 3 Habitat Mitigation Plan* included in the ~~final order~~Final Order on Amendment #4 as Attachment ~~B~~C and as revised from time to time. The certificate holder shall acquire the legal right to create and maintain the enhancement area for the life of the facility by means of an outright purchase, conservation easement or similar conveyance and shall provide a copy of the documentation to the ~~Office~~Department of Energy. The certificate holder shall determine the location of this habitat enhancement area in consultation with ODFW and landowners. [Amendment #4]

Explanation

This revision modifies Condition 112 to address habitat mitigation for the new Stateline 3 configuration. The modification provides for calculation of the habitat mitigation

area requirement based on the final design configuration of Stateline 3. The Department's recommended *Stateline 3 Habitat Mitigation Plan* is shown in Attachment C and is incorporated herein by this reference.

Revision 69

Page 27, lines 25-39:

(113) To protect the public from electrical hazards including electric and magnetic field exposure, the certificate holder shall:

(a) Enclose the substation with a seven-foot-tall chain link fence with barbed wire at the top pointing out at a 45-degree angle.

~~(b) Attach the 34.5-kV aboveground collector lines to single-pole wood structures that are typically 42 feet high and with minimum design ground clearance of 25 feet to the lowest conductor as described in the Request for Amendment #2.~~

(~~c~~b) Attach the ~~115-kV or~~ 230-kV aboveground transmission lines to H-frame structures that consist of two wooden poles connected by cross-members with a typical overall height of ~~70~~61 feet and a minimum design ground clearance of 25 feet to the lowest conductor as described in the Request for Amendment #~~2~~4.

(~~d~~c) Design and construct the transmission lines so that:
(i) Alternating current electric fields during operation do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public, and
(ii) Induced voltages during operation are as low as reasonably achievable.

[Amendment #4]

Explanation

This revision modifies Condition 113 to reflect the new Stateline 3 configuration, in which there would be no aboveground 34.5-kV collector lines. The new Stateline 3 aboveground transmission line connecting the substation with the regional transmission system in Washington would be a 230-kV line.

Revision 70

Page 27, lines 40-43:

(114) To deter raptors from perching on transmission support structures near the wind turbines, the certificate holder shall install anti-perching devices on all proposed ~~single-pole and double-pole~~support structures within one-half mile of any turbine, unless the top of the support structure is below the base of the turbine tower due to topography. Wherever feasible, the certificate holder shall use "spike-type" devices instead of "triangle-type" devices. [Amendment #4]

Explanation

This revision modifies the condition to reduce the distance from turbines within which anti-perching devices are required on transmission support structures. The modification excludes transmission support structures that are located at a lower elevation, if the top of the structure is below the base of the turbine tower.

Revision 71

Page 28, lines 1-3:

(115) To protect raptors, the certificate holder shall design structures for ~~aboveground 34.5-kV, 115-kV and the~~ 230-kV transmission lines to conform to the guidelines of the Avian Power Line Interaction Committee so that electrical conductors are spaced far enough apart to reduce the risk of bird electrocution. [Amendment #4]

Explanation

This revision modifies Condition 115 to reflect the new Stateline 3 configuration, in which there would be no aboveground 34.5-kV collector lines. The new Stateline 3 aboveground transmission line connecting the substation with the regional transmission system in Washington would be a 230-kV line. The revision requires the certificate holder to design the transmission line to conform to the guidelines of the Avian Power Line Interaction Committee.

Revision 72

Page 28, lines 4-11:

(116) ~~Except as required for known burrowing owl nest sites under Condition (54), the certificate holder may engage in construction activities within construction zones during the sensitive grasshopper sparrow and other ground-nesting wildlife season (April 15 to June 30) subject to the requirements of this condition. Construction zones include the areas of permanent and temporary disturbance and a 175-foot surrounding buffer in which there may be incidental construction impacts. Construction is allowed during the sensitive period only if the certificate holder has removed vegetation in the construction zone (excluding the 175-foot surrounding buffer) before April 15 of the year in which the construction occurs.~~[Condition removed by Amendment #4]

Explanation

This revision removes Condition 116. This condition was intended to avoid adverse impacts to nesting grasshopper sparrows and other ground-nesting species by construction activities occurring in nesting habitat. Areas suitable for nesting by these species would be classified as Category 2. Proposed new Condition 131, discussed herein, would require avoidance of disturbance of all Category 2 habitat. Accordingly, Condition 116 is not needed.

Revision 73

Page 28, lines 22-24:

(118) The certificate holder shall construct stream crossings substantially as described in the ~~Request for Amendment #2, Exhibit 21~~Final Order on Amendment #4. In particular, the certificate holder shall not remove material from waters of the state or add~~use more than 50 cubic yards of~~ new fill material to waters of the state such that the total volume of removal and fill exceeds 50 cubic yards for the project as a whole~~in total for all stream crossings combined~~. [Amendment #4]

Explanation

The revision of Condition 118 reflects the DSL limitation on the total amount of removal and fill that may be done in waters of the state without a Removal/Fill Permit.

Revision 74

Page 28, lines 28-32:

(120) The certificate holder shall verify that the actual sound power level output of the ~~Vestas V47-660-kW~~ wind turbines constructed for Stateline 3 meets the manufacturer's warranty. This verification may consist of field measurement or other means of verification satisfactory to the ~~Office~~Department of Energy. The certificate holder shall include the verification in the first annual report following construction of any Stateline 3 turbines. [Amendment #4]

Explanation

This revision modifies Condition 120 to reflect the new Stateline 3 configuration, in which either 1.5-MW or 2.3-MW turbines would be used.

Revision 75

Page 28, lines 33-41, and page 29, lines 1-15:

VIII. CONDITIONS ADDED BY AMENDMENT #3

~~The conditions in this section apply to the facility as a whole. [Amendment #3]~~

(121) ~~The certificate holder shall not construct any Stateline 3 facilities in areas identified as Category 1 habitat in the Final Order on Amendment #2 or otherwise disturb that habitat unless the Council specifically authorizes such construction or other disturbance in a future site certificate amendment proceeding. In a future proceeding, the Council may consider proposed changes in the location of Stateline 3 facilities in the affected area, may re-evaluate whether some or all of the affected area qualifies as Category 1 habitat and, if appropriate, may apply its balancing authority under OAR 345-022-0000(2). [Amendment #3]~~[Condition removed by Amendment #4]

(122) ~~Prior to constructing any turbine within 5,000 feet of the property identified as 81876 Gerking Flat Road, Athena, Oregon, the certificate holder shall enter into a legally effective easement or real covenant pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate measurement point. The 5,000-foot distance shall be measured from the appropriate measurement point as determined pursuant to OAR 340-035-0035. A legally effective easement or real covenant shall: include a legal description of the burdened property (the noise sensitive property); be recorded in the real property records of the county; expressly benefit the certificate holder; expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and not be subject to revocation without the certificate holder's written approval. If such easement or real covenant is not in effect, then the certificate holder shall demonstrate to the satisfaction of the Department, based on modeling or measurements performed in compliance with OAR 340-035-0035, that an easement or real covenant is not necessary to comply with those regulations. [Amendment #3]~~[Condition removed by Amendment #4]

Explanation

This revision removes Conditions 121 and 122. Condition 121 was an interim measure that the Council adopted in the Final Order on Amendment #3 to address previously approved construction of the old Stateline 3 configuration in Category 1 habitat. The condition prohibited construction in Category 1 habitat, pending an anticipated amendment of the

Stateline 3 layout. In the Request for Amendment #4, the applicants presented a new Stateline 3 layout that would not directly affect Category 1 habitat. Revision 46 modifies Condition 69 to require avoidance of impacts on essential WGS habitat, which is considered Category 1 habitat by ODFW. Revision 85 describes new Condition 131, which would require avoidance of disturbance to Category 1 and Category 2 habitat. Because impact to Category 1 habitat would be avoided by the new Stateline 3 configuration, Condition 121 is no longer needed.

The Council adopted Condition 122 to ensure compliance of the old Stateline 3 configuration with the DEQ Noise Control Regulations. Revision 87 addresses recommended new Condition 133 to ensure compliance of the new Stateline 3 configuration with the noise regulations. Condition 122 is not applicable to the new Stateline 3 configuration.

Revision 76

Page 29 following line 15:

IX. CONDITIONS ADDED BY AMENDMENT #4

Except as specifically noted, the conditions in this section apply to Stateline 3 only. In applying the conditions in this section, "certificate holder" means FPL Stateline. In applying the conditions in this section, "certificate holder" means FPL Vansycle with regard to Stateline 1&2 and FPL Stateline with regard to Stateline 3. [Amendment #4]

Explanation

This revision adds a section to the Site Certificate to include new conditions applicable to Stateline 3. The subsequent sections would be re-numbered accordingly.

Revision 77

Page 29, following Revision 76:

(123) The certificate holder shall design and construct Stateline 3 in compliance with the County design requirements as described in Umatilla County Development Code Sections 152.010, 152.011, 152.015, 152.018, 152.063(E) and 152.616(HHH)(5)(F) in effect as of October 24, 2008. [Amendment #4]

Explanation

This revision ensures that the Stateline 3 components would be designed and built in accordance with the County design requirements discussed herein. The Council applies the applicable local criteria in effect as of the date the amendment request was submitted (October 24, 2008).

Revision 78

Page 29, following Revision 77:

(124) The certificate holder shall ensure that construction contractors use a transportation route reviewed and approved by the Umatilla County Public Works Director for all oversized and heavy load transport vehicles. [Amendment #4]

Explanation

This revision adds a condition requested by Umatilla County.

Revision 79

Page 29, following Revision 78:

(125) The certificate holder shall record a Covenant Not to Sue with regard to generally accepted farming practices as required by Umatilla County Development Code Section 152.616(HHH)(2)(E). [Amendment #4]

Explanation

This revision requires the certificate holder to record a Covenant Not to Sue in accordance with the requirements of UCDC Section 152.616(HHH)(2)(E).

Revision 80

Page 29, following Revision 79:

(126) The certificate holder shall construct all Stateline 3 components in compliance with the following setback requirements:

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

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

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

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

(e) The certificate holder shall not locate equipment associated with the temporary batch plant within 50 feet of a public road, county road or utility right of way.

[Amendment #4]

Explanation

This revision incorporates the residential setback distance required under UCDC Section 152.616(HHH)(5) and the safety setback distances that the Council has adopted in recent site certificates for wind energy facilities. In subsection (e), the proposed condition incorporates a setback for batch plant equipment, which is required under UCDC Section 152.617(I)(K)(2).

Revision 81

Page 29, following Revision 80:

(127) The certificate holder shall deliver a copy of the annual report required under Condition 8 to the Umatilla County Planning Commission on an annual basis unless specifically discontinued by the County. [Amendment #4]

Explanation

This revision adds a condition requested by Umatilla County.

Revision 82

Page 29, following Revision 81:

(128) During construction, the certificate holder shall position a 3,000-gallon water truck on-site while personnel are present and actively working. [Amendment #4]

Explanation

This revision incorporates an agreement between the applicants and the Chief of the Milton-Freewater Rural Fire Department.

Revision 83

Page 29, following Revision 82:

(129) During operation, the certificate holder shall discharge sanitary wastewater generated at the Stateline 3 O&M building to a licensed on-site septic system in compliance with county permit requirements. The certificate holder shall locate the septic system more than 100 feet from any streams, lakes or wetlands. The certificate holder shall design the septic system for a discharge capacity of less than 2,500 gallons per day. [Amendment #4]

Explanation

This revision provides location and design requirements for the Stateline 3 septic system. The new condition incorporates the setback requirements of UCDC Section 152.063(E).

Revision 84

Page 29, following Revision 83:

(130) During operation, the certificate holder shall obtain water for on-site uses from a wells located at the Stateline 3 O&M building, subject to compliance with applicable permit requirements. The certificate holder shall not use more than 5,000 gallons of water per day from the on-site well. [Amendment #4]

Explanation

This revision provides for an on-site well for operational purposes at the O&M building. The new condition limits the water use to 5,000 gallons per day.

Revision 85

Page 29, following Revision 84:

(131) The certificate holder shall avoid permanent and temporary disturbance to all Category 1 and Category 2 habitat within the Stateline 3 site boundary. [Amendment #4]

Explanation

This revision ensures that construction of Stateline 3 would have no permanent or temporary impact on Category 1 or Category 2 habitat within the Stateline 3 site boundary.

Revision 86

Page 29, following Revision 85:

(132) Before beginning construction, the certificate holder shall conduct a site-specific geotechnical investigation and shall report its findings to the Oregon Department of Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall conduct the geotechnical investigation after consultation with DOGAMI and in general accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic Reports and Site-Specific Seismic Hazard Reports." [Amendment #4]

Explanation

This revision requires the certificate holder to conduct a pre-construction, site-specific geotechnical investigation and to report the results to DOGAMI and the Department.

Revision 87

Page 29, following Revision 86:

(133) Before beginning construction, the certificate holder shall provide to the Department:

(a) Information that identifies the final design locations of all Stateline 3 wind turbines to be built.

(b) The maximum sound power level for the Stateline 3 substation transformers and the maximum sound power level and octave band data for the turbines selected for the Stateline 3 based on manufacturers' warranties or confirmed by other means acceptable to the Department.

(c) The results of noise analysis of the facility, including the Stateline 3 components to be built according to the final design, performed in a manner consistent with the requirements of OAR 340-035-0035(1)(b)(B)(iii)(IV) and (VI) demonstrating to the satisfaction of the Department that the total noise generated by the facility (including the noise from turbines and substation transformers) would meet the ambient degradation test and maximum allowable test at the appropriate measurement point for all potentially-affected noise sensitive properties.

(d) For each noise-sensitive property where the certificate holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-035-0035 (1)(b)(B)(iii)(III), a copy of the a legally effective easement or real covenant pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate measurement point. The legally-effective easement or real covenant must: include a legal description of the burdened property (the noise sensitive property); be recorded in the real property records of the county; expressly benefit the certificate holder; expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and not be subject to revocation without the certificate holder's written approval.

[Amendment #4]

Explanation

This revision adds Condition 133, which ensures that the SWP, including the Stateline 3 components in their final design locations, would comply with the DEQ Noise Control Regulations.

Revision 88

Page 29, following Revision 87:

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

Explanation

This revision adds Condition 134, which requires the certificate holder to maintain a complaint response system to address any complaints about noise from the facility during operation. The condition provides for verification that the facility is operated in compliance with the applicable noise limits.

Revision 89

Page 29, following Revision 88:

(135) During construction, the certificate holder shall not install any transmission line support structures within 800 feet of any active Swainson's hawk nest identified in 2008 or later. [Amendment #4]

Explanation

This revision adds Condition 135, which would mitigate possible disturbance to nesting Swainson's hawks during construction of Stateline 3.

Revision 90

Page 29, following Revision 89:

(136) This condition applies to all phases of the Stateline Wind Project. When any third-party lien or security interest in the facility's wind turbines or turbine towers is created, the certificate holder shall notify such third party in writing that the wind turbines and towers are components an energy facility that is subject to the terms and conditions of a Site Certificate and subject to the rules of the Oregon Energy Facility Siting Council. The certificate holder shall provide to the Department a copy of each written notification required under this condition and the name and contact information for each third party so notified. [Amendment #4]

Explanation

This revision ensures that any third party having an interest in the facility's wind turbines or turbine towers has notice of the existence of the Site Certificate and that any disposition of the turbines and towers would be subject to Council rules. The condition requires the certificate holder to identify any third party having a lien or security interest in the turbines or towers so that the Department can notify those parties if termination of the Site Certificate is initiated under OAR 345-027-0110.

VIII. ORDER

The Council approves Amendment #4 and issues an amended site certificate for the Stateline Wind Project, subject to the terms and conditions set forth above and subject to the following decision regarding financial assurance (as indicated by the initials of the Council Chair).

_____ The Council finds that $3.962 million (1st Quarter, 2009 dollars) is a reasonable estimate of the cost to restore Stateline 1&2 to a useful, non-hazardous condition and that $3.976 million (1st Quarter, 2009 dollars) is a reasonable estimate of the cost to restore Stateline 3 to a useful, non-hazardous condition. The Council adopts Condition 80, Alternative A, and Condition 109, Alternative A, as described herein.

RS The Council finds that $6.160 million (1st Quarter, 2009 dollars) is a reasonable estimate of the cost to restore Stateline 1&2 to a useful, non-hazardous condition and that $5.911 million (1st Quarter, 2009 dollars) is a reasonable estimate of the cost to restore Stateline 3 to a useful, non-hazardous condition. The Council adopts Condition 80, Alternative B, and Condition 109, Alternative B, as described herein.

Issued this 27th day of March, 2009.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: Robert Shiprack

Robert Shiprack, Chair
Oregon Energy Facility Siting Council

Attachments
Attachment A: Wildlife Monitoring and Mitigation Plan
Attachment B: Revegetation Plan
Attachment C: Stateline 3 Habitat Enhancement Plan

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal, you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.